

EXHIBIT PP

STEPHEN G. BURNS

August 19, 2020

NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY

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	Page 1	Page 3
1	IN THE UNITED STATES DISTRICT COURT	1 APPEARANCES:
2	FOR THE NORTHERN DISTRICT OF ALABAMA	2 ON BEHALF OF THE PLAINTIFF:
3	NORTHEASTERN DIVISION	3 CAINE O'REAR III, ESQUIRE and
4		4 LARRY D. BLUST, ESQUIRE
5	NUCLEAR DEVELOPMENT, LLC,	5 (Appearing via Zoom Hookup)
6	Plaintiff,	6 Hand Arundall Harrison Sale LLC
7	-vs- CIVIL ACTION CASE NUMBER	7 P.O. Box 123
8	TENNESSEE VALLEY AUTHORITY 5:18-cv-01983-LCB	8 Mobile, AL 36601
9	Defendant	9 Telephone(251)432-5511
10	_____ _____	10 E-mail: corear@handfirm.com
11		11
12		12
13	Zoom Deposition of Stephen G. Burns	13 ON BEHALF OF THE DEFENDANT:
14	Baltimore, MD	14 MATTHEW H. LEMBKE, ESQUIRE
15	Wednesday August 19, 2020	15 (Appearing via Zoom Hookup)
16	10:00 a.m.	16 Bradley, Arant, Boult, Cummings LLP
17		17 1819 5th Avenue North
18	Job No: J5882449	18 Birmingham, AL 35203
19	Pages: 1-349	19 Telephone(817)870-1717
20	Reported by: Kenneth Norris	20 E-mail: dlunningham@watsoncaraway.com
21		21
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1	Deposition of Stephen G. Burns	1 ON BEHALF OF THE DEFENDANT, TENNESSEE VALLEY
2	Taken via Zoom	2 AUTHORITY:
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4		4 (Appearing via Zoom Hookup)
5		5 Office of the General Counsel
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7		7 400 West Summit Hill Drive, WT6
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9		9 Telephone(817)870-1717
10	Pursuant to Notice, before Kenneth Norris, a	10 E-mail: scchin@tva.gov
11	Professional Reporter and Notary Public in and for the	11
12	State of Maryland.	12
13		13
14		14
15		15
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11	Exhibit 82 Letter dated November 13,	54	11	
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1	Definition section of the		1	PROCEEDINGS
2	Atomic Energy Act		2	Whereupon,
3	Exhibit 204 Nuclear Regulatory Commission	165	3	Stephen G. Burns
4	Improvements for Production and		4	A witness of lawful age, after being duly sworn to
5	Utilization Facilities		5	tell the truth, the whole truth and nothing but the
6	Transitioning to Decommissioning		6	truth, testified as follows:
7	Exhibit 205 10 CFR 50.5	201	7	EXAMINATION:
8	Exhibit 132 Zimmer decision	242	8	BY MR. O'REAR:
9	Exhibit 130 Letter dated 9/14/2006 from	251	9	Q. Good morning, Mr. Burns.
10	Ms. Haney to Mr. Singer		10	MR. LEMBKE: Let me note for the record we
11	Exhibit 131 One-paged document dated	252	11	reserve the right to read and sign.
12	February 18, 2009		12	And am I correct that this is not being
13	Exhibit 206 Letter from TVA to the NRC	257	13	recorded by video?
14	Dated April 6th, 2006		14	MR. O'REAR: That's correct.
15	Exhibit 207 Letter from TVA to the NRC	261	15	MR. LEMBKE: Okay.
16	Dated June 29, 2006		16	BY MR. O'REAR:
17	Exhibit 208 Letter dated 8/22/2006 from	272	17	Q. Good morning, Mr. Burns. My name's Caine
18	The NRC to Mr. Singer at TVA		18	O'Rear. I represent Nuclear Development in this
19	Exhibit 129 Proposal on decommissioning	294	19	lawsuit. How are you doing?
20	Exhibit 201 Letter from Stephen Burns	297	20	A. Great, thanks.
21	Exhibit 14 E-mail from Chris Chandler to	308	21	Q. Why don't you state your full name for us?

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<p>1 A. My name's Stephen Gilbert Burns.</p> <p>2 Q. And where are you located right now?</p> <p>3 A. I'm in my home at -- or apartment at 3016</p> <p>4 Tilden Street Northwest, Washington, D.C., 20008.</p> <p>5 Q. Is that your permanent residence?</p> <p>6 A. It is.</p> <p>7 Q. Do you have any other residences?</p> <p>8 A. No.</p> <p>9 Q. What was your address when you worked with</p> <p>10 the NRC?</p> <p>11 A. Well, my address when I was a commissioner</p> <p>12 was this address. Although I bought this apartment in</p> <p>13 late 2000- -- or late 2014. And for about</p> <p>14 three months I was living with some friends in the</p> <p>15 area. But when I was at the NRC as an attorney and</p> <p>16 when I retired in 2012, I had been at my residence in</p> <p>17 Silver Spring, Maryland from about 1988 through</p> <p>18 2012 -- through 2012. Excuse me.</p> <p>19 Q. Okay. Well, my question really was</p> <p>20 intended -- what was your business address when you</p> <p>21 were at the NRC?</p>	Page 9	<p>1 It's probably about 35 years since I took a</p> <p>2 deposition.</p> <p>3 Q. Okay. But you're familiar with the rules of</p> <p>4 a deposition, how they proceed?</p> <p>5 A. Generally yes, I would say so.</p> <p>6 Q. Do you have any questions for me before we</p> <p>7 begin your examination?</p> <p>8 MR. LEMBKE: Object. I mean, that's a vague</p> <p>9 question.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Okay. Did you -- that's fine.</p> <p>12 Let's talk about your experience at the NRC</p> <p>13 briefly.</p> <p>14 I note you received your law degree in 1978</p> <p>15 and then you went to work right out of law school for</p> <p>16 the NRC. Is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And in looking at Exhibit 199 -- do you have</p> <p>19 that before you?</p> <p>20 A. Yes.</p> <p>21 Q. Is that your report that you presented in</p>	Page 11
<p>1 A. Well, my business address would have been at</p> <p>2 the NRC headquarters which is 11555 Rockville Pike,</p> <p>3 Rockville, Maryland. And I'm a little uncertain of</p> <p>4 the zip code. I think it's 20852.</p> <p>5 Q. But did you have an office there for the</p> <p>6 entire time you were with the NRC?</p> <p>7 A. Yes. From -- basically from 1988 on.</p> <p>8 Before then, the NRC -- when I first started working</p> <p>9 for the NRC, the agency was spread out over about 12</p> <p>10 buildings. I was working in a building in Bethesda,</p> <p>11 Maryland.</p> <p>12 And then when I worked for -- was an</p> <p>13 assistant to one of the commissioners in the late</p> <p>14 '80s, I worked from the commission -- the commission's</p> <p>15 headquarters which was at 1717 H Street Northwest.</p> <p>16 Q. Okay. Thank you. Have you ever given a</p> <p>17 deposition?</p> <p>18 A. I think so, but it's been about 25 or</p> <p>19 30 years.</p> <p>20 Q. Have you ever taken a deposition?</p> <p>21 A. Yes. And that's been longer ago than that.</p>	Page 10	<p>1 this case?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And do Paragraphs 2, three, four and five</p> <p>4 describe your experience at the NRC?</p> <p>5 A. Yes, at the NRC. But I -- yes, yes, yes. I</p> <p>6 think it also talks about my experience at the</p> <p>7 Organization For Economic Development and Cooperation,</p> <p>8 a nuclear energy agency in Paris.</p> <p>9 Q. All right. Generally it looks like you had</p> <p>10 various positions at the NRC from 1978 through 1994.</p> <p>11 And that in 1994, you became associate general</p> <p>12 counsel. Is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you have any particular area of</p> <p>15 responsibility when you were associate general</p> <p>16 counsel?</p> <p>17 A. Yes. Basically I was responsible for the</p> <p>18 legal staff who provided advice and representation to</p> <p>19 staff supporting the technical offices, the Office of</p> <p>20 Nuclear Reactor Regulation, Nuclear Materials Safety</p> <p>21 and Safeguards as well as the personnel in contracting</p>	Page 12

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1 matters, so the administrative side.	1 his name offhand.
2 Q. Okay. So are you limiting your answer --	2 And then there were others; Luis Raez and
3 was it all administrative or are you saying it was	3 Bill Borchard and -- yeah, I think Bill Borchard was
4 both?	4 still with EDO when I left in 2012, or when I was
5 A. No, it was both.	5 deputy -- up through my deputy service.
6 Q. So it would be the staff and administrative?	6 Q. Then you served as general counsel from
7 A. Staff and administration.	7 2009 -- April 2009 to April 2012?
8 That -- hence the title. You can see it in	8 A. That's correct.
9 the title of associate general counsel for hearings	9 Q. Okay. Were you appointed as general
10 and enforcement and administration.	10 counsel? How did that occur?
11 Q. Then you became deputy general counsel in	11 A. Yes. The commission has the responsibility
12 1998?	12 for appointing the general counsel. So it's
13 A. Correct.	13 basically, it's a vote of the commissioners. You're
14 Q. Served in that position until March of 2009.	14 nominated by the chairman and then a majority has to
15 Is that correct?	15 approve you in that position. It's one of several
16 A. March. It may have been April 2009, into	16 positions within the Agency that require that kind of
17 April.	17 appointment.
18 Q. What was your area of responsibility as	18 Q. And when you were appointed, was it for a
19 deputy general counsel?	19 specific term or was it an indefinite term?
20 A. As deputy general counsel I was the --	20 A. No, it was indefinite.
21 basically the chief advisor to the executive director	21 Q. And then you left. Why did you leave in
Page 14	Page 16
1 for operations at the NRC, who is the senior staff	1 April of 2012?
2 person who has -- he's like the chief operating	2 A. I left to take the position at the OCD, the
3 officer at the NRC. He was responsible for almost all	3 nuclear reactor agency in Paris. A friend of mine who
4 of the -- all of the technical offices as well as	4 was the deputy director general there had encouraged
5 personnel, administration, things like that. So I was	5 me to apply. I had done some work with them. It
6 his chief legal advisor providing legal support.	6 sounded like an interesting opportunity, so I decided
7 I also -- and because of the need to	7 to apply. I was offered the position. And so I
8 maintain separation of functions within the Agency on	8 retired from federal service at that time and I left.
9 adjudicatory matters, I was basically the senior	9 Q. And so you made the Paris stand. Is that
10 counsel who oversaw the staff, the legal staff who	10 right?
11 represented the technical offices in NRC	11 A. That's correct.
12 adjudications.	12 Q. All right. And that was a political
13 We had to do that because the general	13 appointment, is that correct?
14 counsel would be the advisor to the Commission which	14 A. No, that's not a political appointment.
15 often would sit in an adjudicatory role.	15 Q. Then how were you selected for that
16 Q. And who was the executive director of	16 position?
17 operations when you were deputy general counsel?	17 A. As the head of legal affairs in Paris?
18 A. When I was deputy general counsel, there	18 Q. Yes.
19 were several -- several -- I think there was Joseph	19 A. Okay. I was -- I applied for the position.
20 Talon and it was followed by -- I'm losing it. It's	20 So I submitted an application into the OECD. I was
21 Bill -- he wound up over at the UAE. I can't remember	21 interviewed for it and then I was selected by -- you

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1 go through an interview process. Then I think I was	1 A. That is correct.
2 selected by the director general or deputy director	2 Q. And then what was the reason for her leaving
3 general.	3 the chairmanship at that time?
4 Q. And then you became a commissioner on	4 A. She ended her service as a commissioner.
5 November the 5th, 2014?	5 She had taken a full time position on the faculty of
6 A. That's correct.	6 one of the schools at the George Washington
7 Q. And that is a political appointment,	7 University.
8 correct?	8 Q. And you served as chairman until January of
9 A. Political appointment. You're nominated by	9 2017, correct?
10 the president and must be confirmed by the center.	10 A. Yes.
11 Q. You were nominated by President Obama?	11 Q. And who became chairman after you?
12 A. That's correct.	12 A. Christine Svinicki. I can spell it.
13 Q. Okay. You served as commissioner through	13 Q. Spell it for the court reporter.
14 April 30th, 2019, correct?	14 A. It's S-V-I-N-I-C-K-I.
15 A. Correct.	15 Q. And was she chairman at the time you left
16 Q. Is the full term a five-year term?	16 the Commission?
17 A. The full term is a five-year term, but -- so	17 A. Yes, and she still is the chairman.
18 my term would have gone through June 2019. However,	18 Q. What were you engaged to be an expert
19 depending on the appointment process, you may never --	19 witness in this case?
20 many commissioners do not serve a five-year term.	20 A. It would have been in March of this year.
21 For example, the term I went into had	21 Q. Okay. So that would be approximately
Page 18	
1 started running in July of 2014. But I wasn't	1 10 months after you left the NRC?
2 confirmed until -- I wasn't even nominated until late	2 A. Yes. That's about right.
3 July 2014, and then I was confirmed sometime in	3 Q. Are you a member of any bar association?
4 September, in mid-September. And then I worked out	4 A. I'm a member of the District of Columbia
5 when I would start service because I had to wrap	5 Bar.
6 things up in Paris in my old position.	6 Q. Are you a member of any other bar, of any
7 Q. So the term was for a place and not	7 Court?
8 necessarily for an individual. Is that correct?	8 A. I was admitted to the D.C. Circuit Court of
9 A. That's correct. That's correct.	9 Appeals and the D.C. Court Of Appeals but I've never
10 Q. Who was chairman of the Commission when you	10 appeared before either of them.
11 were appointed commissioner?	11 Oh, I see -- correct that.
12 A. Allison Macfarlane.	12 My name's been on briefs in front of the
13 Q. And was she chairman the entire time before	13 D.C. circuit as general counsel.
14 you became chairman?	14 Q. But you're currently a member of the D.C.
15 A. I'm not sure I understand. From what -- I	15 bar. Is that correct?
16 need to understand the point in time.	16 A. I'm an active member of the D.C. bar.
17 Q. Okay. You became chairman at January of	17 Q. And are you licensed to practice law in
18 2015?	18 Alabama?
19 A. Correct.	19 A. No, I am not.
20 Q. Between November 2014 and January 2015, she	20 Q. Have you ever served as an expert witness in
21 was the chairman. Is that correct?	21 other cases?

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<p>1 A. No, I have not.</p> <p>2 Q. And when I say case, either judicial or</p> <p>3 administrative?</p> <p>4 A. No, I have not.</p> <p>5 Q. While you were at the NRC, did you ever</p> <p>6 personally work on any construction permit transfer</p> <p>7 application?</p> <p>8 A. I don't have a particular recollection of</p> <p>9 working on a construction permit transfer application.</p> <p>10 I did work on issues related to construction permits</p> <p>11 and enforcement matters related to the oversight of</p> <p>12 construction.</p> <p>13 Q. When you were at the NRC, did you ever</p> <p>14 personally work on any operating license transfer</p> <p>15 applications?</p> <p>16 A. Yes, I did work on some of those.</p> <p>17 Q. Tell us about those.</p> <p>18 A. Some of those involved a -- well, some of</p> <p>19 them were what I would call more usual transfers and</p> <p>20 the others arose out of bankruptcy proceedings. I can</p> <p>21 recall, for example, bankruptcy proceedings involving,</p>	Page 21	<p>1 because many of them would have been.</p> <p>2 Q. Okay. Do you recall any at this point?</p> <p>3 A. I don't have a particular recollection of</p> <p>4 particular cases because this would have been some</p> <p>5 time ago.</p> <p>6 Q. Can you tell us what the duties of the</p> <p>7 commissioners of the NRC are?</p> <p>8 A. The basic duties of the commissioner are,</p> <p>9 you can encapsulate them in three concepts; policy</p> <p>10 making, rule making and adjudication. Those are the</p> <p>11 basic responsibilities in terms of the those types of</p> <p>12 matters that would come up to the Commission.</p> <p>13 The other thing would be in some areas with</p> <p>14 respect to administration. As I noted before in my</p> <p>15 appointment as general counsel, that is a duty or a</p> <p>16 power of the commissioners, to appoint certain</p> <p>17 officials.</p> <p>18 That's the duties of the commissioner.</p> <p>19 Q. Now, with respect to all three of the</p> <p>20 duties; you said policy formation, rule making and</p> <p>21 adjudications. Could each of those include issues</p>	Page 23
<p>1 for example, small cooperatives who had gone into</p> <p>2 reorganization, and because they might be either</p> <p>3 leaving the licensure or the licensing framework over</p> <p>4 which they were controlled or because they were</p> <p>5 reorganized into a new entity, that would require NRC</p> <p>6 review and approval.</p> <p>7 Q. Did you work on any operational license</p> <p>8 transfer applications involving a transfer from one</p> <p>9 entity to another pursuant to the negotiated contract?</p> <p>10 A. I don't -- I don't know. Because usually</p> <p>11 when we are reviewing the transfer, we're not so much</p> <p>12 looking at the underlying contract. We're looking</p> <p>13 at --</p> <p>14 Q. Are you aware of one that involved an</p> <p>15 underlying contract whether you looked at it or not?</p> <p>16 A. I'm sorry. Repeat.</p> <p>17 Q. Were you involved in any such transaction</p> <p>18 involving an operational licence transfer pursuant to</p> <p>19 a negotiated contract between the parties whether you</p> <p>20 looked at the contract or not?</p> <p>21 A. Well, I think that the answer would be yes</p>	Page 22	<p>1 involving licensing?</p> <p>2 A. Yes. And that -- that's what -- in a sense</p> <p>3 that's what an adjudication encapsulates. So yes,</p> <p>4 commissioners do have responsibility for licensing but</p> <p>5 that is generally at a high level, it's not day to day</p> <p>6 administration of a licensing -- requests or transfer</p> <p>7 request or things like that.</p> <p>8 Q. Describe the adjudication process -- the</p> <p>9 administrative adjudication process within the NRC.</p> <p>10 A. Under the Atomic Energy Act, basically in</p> <p>11 Section 189, it describes those actions of the</p> <p>12 Commission which are subject to a potential hearing,</p> <p>13 and that basically licensing and whether that's for</p> <p>14 nuclear reactors or materials, radioactive --</p> <p>15 materials licensees or users of radioactive material.</p> <p>16 In some instances, for example, in the</p> <p>17 initial issuance of a construction permit or a</p> <p>18 combined -- under the newer process, a combined</p> <p>19 license, the statute requires a hearing. In fact in</p> <p>20 those circumstances, the Commission itself in recent</p> <p>21 years has held that man -- so called mandatory</p>	Page 24

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<p>1 hearing.</p> <p>2 But otherwise what you have is a process</p> <p>3 which the NRC will issue a notice of certain licensing</p> <p>4 actions, it will invite potential hearings or request</p> <p>5 for a hearing and in a licensing matter, typically</p> <p>6 that's going to be what we call an intervener or</p> <p>7 public interest group. It might be a State or a local</p> <p>8 government who have issues that they want to have</p> <p>9 heard at that -- in that proceeding.</p> <p>10 The Commission -- in the adjudicatory</p> <p>11 process you also have enforcement actions and certain</p> <p>12 enforcement actions, particularly civil penalties and</p> <p>13 orders carry with it an opportunity for hearing. And</p> <p>14 most of -- enforcement hearings in that -- in those</p> <p>15 circumstances would be one where the hearing has been</p> <p>16 requested by a licensee who's subject to the order,</p> <p>17 who objects to the order, objects to the sanction.</p> <p>18 Q. Now, are these hearings before the</p> <p>19 Commission?</p> <p>20 A. Not all of them. Most of it -- the</p> <p>21 Commission has -- the Atomic Safety and Licensing</p>	Page 25	<p>1 to the -- actually the late 1950s and it was modified</p> <p>2 around 1962 -- is that the statute requires the Agency</p> <p>3 to hold a hearing. It doesn't say what it needs to</p> <p>4 be.</p> <p>5 Now, in practice what has happened with the</p> <p>6 mandatory hearing processes is that the Agency has</p> <p>7 focused on certain aspects of the application that</p> <p>8 might be interesting. For example, I can think of --</p> <p>9 I think maybe it was with one of the Vogtles or the</p> <p>10 Summer plant where -- which were using the AP 1000</p> <p>11 design.</p> <p>12 The AP 1000 design, the baseline design is I</p> <p>13 think for a less seismically active area than the</p> <p>14 areas where Vogtle and Summer were located. So I</p> <p>15 think one of the issues -- if I recall one of the</p> <p>16 issues was decided it would be interesting to hear at</p> <p>17 the so called mandatory hearing, would be how the</p> <p>18 seismicity parameters were adjusted to adapt to the</p> <p>19 standard design of the AP 1000.</p> <p>20 But again, the issues can be -- they can be</p> <p>21 offered up by the staff or I think even the applicant</p>
<p>1 Board, which is a panel of judges -- administrative</p> <p>2 judges that are within the Agency. It's combined of</p> <p>3 both lawyers and technical people, and they're the</p> <p>4 ones for the most part who carry out in effect the</p> <p>5 trial level hearing.</p> <p>6 The Commission is in effect the appellate</p> <p>7 body within the Agency and so may hear appeals from --</p> <p>8 from decisions of the board by the various parties.</p> <p>9 As I said, though, perhaps the one exception</p> <p>10 to referring those hearing requests to a license or a</p> <p>11 hearing originating before the licensing board is with</p> <p>12 respect to the so called mandatory hearing required</p> <p>13 with -- under either a construction permit or under</p> <p>14 the combined license, under 10 CFR 50.2.</p> <p>15 Q. And what hearings are mandatory regarding</p> <p>16 construction permits?</p> <p>17 A. Could you repeat that?</p> <p>18 Q. Yes. What are the issues that require a</p> <p>19 hearing on a construction permit?</p> <p>20 A. There's no specific set of issues that's</p> <p>21 required. The statute -- and this goes back -- back</p>	Page 26	<p>1 can know the process. And again, this is in effect a</p> <p>2 non-contested type hearing but it's required to be</p> <p>3 done under the staff.</p> <p>4 Q. Were there any hearings regarding</p> <p>5 construction permits at Bellefonte?</p> <p>6 A. Yes, there were as I recall from looking at</p> <p>7 the history of the plant.</p> <p>8 Q. Were you involved in any of those?</p> <p>9 A. No, that was before I came to the NRC.</p> <p>10 Q. So that was before 1978?</p> <p>11 A. Correct.</p> <p>12 Q. That was with respect to the original</p> <p>13 issuance of the construction permit?</p> <p>14 A. That's correct.</p> <p>15 Q. Would that have been about in 1974?</p> <p>16 A. Yes. Since 1974. And I believe my report</p> <p>17 references the decision of the licensing board and the</p> <p>18 -- in effect the sewage plant review of the -- system</p> <p>19 appeal board on the Bellefonte permit.</p> <p>20 Q. Are you aware of any other hearings relating</p> <p>21 to the Bellefonte construction permit?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A. No. I think the only -- I don't know of any 2 hearings that were actually conducted. I think there 3 were challenges to the reinstatement of the 4 construction permit in, I think that was in 2009 -- 5 2008 or 2009. But -- and I think -- but I think those 6 were dismissed for basically either lack of standing 7 or lack of acceptable contention.</p> <p>8 Q. Is the NRC an independent regulatory 9 Commission of the federal government?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Is it required by law to be independent of 12 the entities that it regulates?</p> <p>13 A. Yes, it is. And it's structured that way.</p> <p>14 Q. And the NRC regulates TVA's activities with 15 respect to its nuclear related facilities. Is that 16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And do you say, is the NRC independent of 19 TVA?</p> <p>20 A. Yes, it is.</p> <p>21 Q. You mentioned enforcement actions as part of</p>	<p>1 program offices. They may be, for example, the 2 director of NRR might issue an order for a violation 3 or to address violations or poor performance but the 4 director also can impose new requirements based on a 5 perception of the need to act according to safety.</p> <p>6 But for the most part, those actions are 7 taken at a staff level. There may be some instances 8 in which there's a communication or coordination with 9 the Commission.</p> <p>10 Q. What is the role of the director of Nuclear 11 Reactor Regulation in the enforcement process?</p> <p>12 A. Again, it depends on what the nature of the 13 enforcement -- the violation may be.</p> <p>14 I would say my understanding is that if you 15 have a violation coming out of an inspection, those 16 are generally going to be handled through regional 17 office that was responsible for the inspection.</p> <p>18 Where the NRR may have a view on it, and so 19 staff -- there may be staff interaction, at the staff 20 level within NRR. The director would probably be 21 informed at more significant levels.</p>
<p style="text-align: right;">Page 30</p> <p>1 the adjudication process. Who handles the enforcement 2 actions as the prosecutor of sorts?</p> <p>3 A. The process, it can depend on the level of 4 the action, enforcement action taken.</p> <p>5 There is an Office of Enforcement that 6 reports to the executive director for operations and 7 that office coordinates with regional offices and with 8 the program offices, that would be Nuclear Reactor 9 Regulation and Nuclear Material Safety and Safeguard.</p> <p>10 But in a number of instances, so that the 11 level of an action may be taken by a different level 12 official. So historically I'd notice a violation if 13 it were identified in an inspection carried out by a 14 regional office; one of the four regional offices. 15 And would be issued by the regional office, an 16 official in that regional office.</p> <p>17 Civil penalty, this has changed over the 18 years since I was sort of directly counsel. But I 19 think the civil penalties are often issued through the 20 Office of Enforcement.</p> <p>21 Orders may be issued by the directors of the</p>	<p style="text-align: right;">Page 32</p> <p>1 And under what's called the reactor 2 oversight process, which is a -- it's basically the 3 approach that the NRC has taken to oversight and 4 enforcement of reactors -- basically operating 5 reactors since about 2001. The director is involved 6 with like an annual assessment process about how the 7 -- how a reactor, operating reactors are doing. And 8 so he or she would have impact or input into that 9 evaluation as to whether or not in heightened scrutiny 10 it's warranted because of poor performance at a 11 reactor site.</p> <p>12 Q. And then, you used the term "order" earlier. 13 Is that a term of art within the Agency?</p> <p>14 A. Well, I don't think so. I don't think so.</p> <p>15 The -- I think the provision for orders are in Section 16 2.202 of the 10 CFR.</p> <p>17 And so what it talks to -- when I use the 18 term "order," I'm often referring to it can be an 19 order to modify, suspended or revoke a license or to, 20 as the other area I mentioned, it might be the 21 circumstance in which you are imposing a new</p>

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<p style="text-align: right;">Page 33</p> <p>1 requirement to address some safety issue, or you might 2 be requiring the licensee to undertake some study or 3 evaluation and report back to the Agency.</p> <p>4 Q. Well, is "order" a term for the disposition 5 of an enforcement matter? In other words, it can be 6 any disposition. Is that correct?</p> <p>7 A. No. No, I would not agree with that. It is 8 a high level -- if you want to use the word 9 "sanction," it's a high level sanction.</p> <p>10 It is typically and perhaps in this respect, 11 I really don't know that it's a "term of art." But it 12 is typically used, an order is issued to modify, 13 suspend or revoke a license, or for such other action 14 that may be appropriate.</p> <p>15 So, for example, you do not issue a notice 16 of violation by -- typically by an order if there's no 17 additional sanction other than noting a violation.</p> <p>18 Q. Can the director of Nuclear Reactor 19 Regulation issue orders?</p> <p>20 A. Yes. Since the beginning of my career there 21 at the NRC, that has been a function of the director</p>	<p style="text-align: right;">Page 35</p> <p>1 Commission. Is that correct?</p> <p>2 A. No. It's focused on sanctioning or imposing 3 requirements on a particular licensee or a set of 4 licensees. And in my experience, there have been 5 circumstances in which the entire set of licensees in 6 a particular area have received an order.</p> <p>7 Q. But I asked you if that was correct, and you 8 said no. So let me restate it.</p> <p>9 The issuance of an order by a director such 10 as the director of Nuclear Reactor Regulation is not 11 part of the rulemaking process of the Commission. Is 12 that correct?</p> <p>13 A. I would agree that it is not undertaken 14 through the rulemaking process.</p> <p>15 Q. And an order issued by a director is not 16 action by the Commission. Is that correct?</p> <p>17 A. No, I wouldn't agree with that. From the 18 standpoint the director has delegated authority from 19 the Commission to act on matters that are within the 20 director's jurisdiction.</p> <p>21 Q. Well, orders issued by directors can be</p>
<p style="text-align: right;">Page 34</p> <p>1 -- of the director.</p> <p>2 Q. When that director issues an order or a 3 decision, is that order or decision considered a rule 4 of the Commission?</p> <p>5 A. Well, the order has legal effect.</p> <p>6 Q. No. Is it considered a rule?</p> <p>7 MR. LEMBKE: Wait a moment. You didn't let 8 him finish his answer, Caine. You need to let him 9 finish his answer before you ask your next question.</p> <p>10 THE WITNESS: Well, as I say, I would -- an 11 order is an enforceable sanction or an enforceable 12 requirement on a licensee. But this is, I think in a 13 classic administrative law dichotomy, you have rules 14 and you have orders. They both have legal effect.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. But the order is not a rule of the 17 Commission. Is that correct?</p> <p>18 A. No, I would not characterize it as a rule. 19 But it still has legal effect.</p> <p>20 Q. And when a director issues an order, that -- 21 the director is not engaging in rulemaking for the</p>	<p style="text-align: right;">Page 36</p> <p>1 taken to the Commission. Is that correct?</p> <p>2 A. They can be appealed to the -- well, they 3 can be appealed to the Commission if a third party or 4 a licensee challenges it. And they would be taken to 5 the Commission typically after the opportunity for 6 hearing before an atomic safety and licensing board.</p> <p>7 Q. But unless there is an appeal to the 8 Commission, an order of the director is not action by 9 the Commission. Is that correct?</p> <p>10 A. By the commissioners themselves. It's not 11 action by the commissioners themselves. It stands as 12 a valid action of the Nuclear Regulatory Commission.</p> <p>13 Q. Have you ever visited the Bellefonte site?</p> <p>14 A. No, I have not visited the Bellefonte site.</p> <p>15 Q. When you were working as an attorney for the 16 NRC, did you ever work on any matters related to the 17 Bellefonte site?</p> <p>18 A. I think when I was deputy general counsel, I 19 may have been aware -- made aware and spoken with my 20 staff with regard to the Bellefonte -- the TVA's 21 decision to at that point withdraw the construction</p>

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<p style="text-align: right;">Page 37</p> <p>1 permit in whatever -- in the 2005, 2006 time frame.</p> <p>2 As general counsel, I was probably -- I have</p> <p>3 some recollection of speaking with my staff at that</p> <p>4 time when the legal staff reported to me, when the --</p> <p>5 when TVA had initiated the steps to reinstate the</p> <p>6 permit. And in fact, the NRC staff, I don't know</p> <p>7 whether it was signed by the director of Nuclear</p> <p>8 Reactor Regulations or it may have been signed by the</p> <p>9 executive director for operations, came to the</p> <p>10 Commission and in that circumstance asked the</p> <p>11 Commission to reflect its view that it thought it was</p> <p>12 a lawful and an appropriate step to reinstate the</p> <p>13 permit.</p> <p>14 And so, I would have been aware of that and</p> <p>15 I may have been consulted by some of the commissioners</p> <p>16 on it at the time.</p> <p>17 Q. You said this was when you were general</p> <p>18 counsel?</p> <p>19 A. Correct. So this was sometime -- I think it</p> <p>20 was in the 2009 time frame.</p> <p>21 Q. Have you been involved in any other matters</p>	<p style="text-align: right;">Page 39</p> <p>1 permits for Bellefonte go before the Commission?</p> <p>2 A. Yes. The staff consulted with the</p> <p>3 Commission and the Commission voted on the</p> <p>4 reinstatement. And I believe there was also an</p> <p>5 adjudicatory challenge, I think. I think the Blue</p> <p>6 Ridge group is the one that often intervened or tried</p> <p>7 to intervene on TVA matters.</p> <p>8 I believe they sought to challenge the</p> <p>9 reinstatement, and there may have been some</p> <p>10 adjudication or adjudicatory orders on that. That I</p> <p>11 just don't recall.</p> <p>12 Q. Did you advise the Commission with respect</p> <p>13 to the reinstatement matter?</p> <p>14 A. Yes. Because, again, my office was</p> <p>15 responsible for concurring in the paper that the staff</p> <p>16 sent to the Commission, and I would have been</p> <p>17 available to commissioners and their staffs to discuss</p> <p>18 where it is.</p> <p>19 I don't have a particular recollection of</p> <p>20 discussions with commissioners, but I certainly was</p> <p>21 aware of it because it was an unusual circumstance.</p>
<p style="text-align: right;">Page 38</p> <p>1 regarding the Bellefonte plant while you were at the</p> <p>2 NRC?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. What matters were pending before the NRC</p> <p>5 while you were there that you may have had official</p> <p>6 responsibility for but did not personally participate</p> <p>7 in?</p> <p>8 MR. LEMBKE: Objection to the form, vague.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Well, do you recall any matters at the NRC</p> <p>11 that you may have had supervisory or official</p> <p>12 responsibility over but did not personally participate</p> <p>13 in that related to the Bellefonte plant site?</p> <p>14 A. In what time frame?</p> <p>15 Q. At any time you were there.</p> <p>16 A. Other than the two I mentioned; the initial</p> <p>17 withdrawal of the permit and then the request for</p> <p>18 reinstatement, I had no other supervisory</p> <p>19 responsibility -- or I don't recall any particular</p> <p>20 matters.</p> <p>21 Q. Did the reinstatement of the construction</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. The Blue Ridge group is an environmental</p> <p>2 group?</p> <p>3 A. Yes, I think it's like Blue Ridge</p> <p>4 Environmental, yeah, and I forget the last name. But</p> <p>5 it's yeah, an environmental group generally that</p> <p>6 intervened or attempted to intervene on a number of</p> <p>7 TVA matters.</p> <p>8 Q. Were you involved in the hearing regarding</p> <p>9 that adjudication initiated by the Blue Ridge</p> <p>10 Environmental group?</p> <p>11 A. I don't know.</p> <p>12 MR. LEMBKE: Hold on. Hold on. Objection</p> <p>13 to the form. It's a lack of foundation.</p> <p>14 I don't think he testified there</p> <p>15 definitively was such a hearing.</p> <p>16 MR. O'REAR: I believe he said there was</p> <p>17 some adjudicatory process.</p> <p>18 MR. LEMBKE: No, he didn't. He said there</p> <p>19 may have been.</p> <p>20 MR. O'REAR: All right.</p> <p>21 BY MR. O'REAR:</p>

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1 Q. Tell us what you recall about that.	1 A. So was I aware then of the TVA decision?
2 A. As I said, I don't -- I have a vague	2 Q. Yes.
3 recollection that the Blue Ridge group may have filed	3 A. I don't have any particular recollection one
4 a challenge. I don't have any particular recollection	4 way or the other.
5 beyond that.	5 Q. Were you aware of it at any time prior to
6 That challenge, if there had been a	6 your leaving the Commission?
7 challenge, it would have been either referred to a	7 A. Well, I think the answer to that is yes,
8 licensing board. It's possible it came to the	8 because while we did not as commissioners have any
9 Commission. I don't recall. And part of that may be	9 particular action before us with respect to a
10 the timing. Because depending on when it came, I	10 potential transfer of the site and its construction
11 might have been gone.	11 permit, we were aware of that. We were aware that --
12 Q. You might have been gone, meaning you left	12 that in effect what that means is, you know,
13 in 2012?	13 implicitly if not knowing even explicitly, which I
14 A. Yes, yes.	14 think we did, that TVA was not planning to pursue
15 Q. Okay. My question -- let me state the	15 itself the completion of construction of the facility.
16 question this way.	16 And I will note, we did have a drop-in visit from
17 Were you involved in any matters relating to	17 Nuclear Development.
18 the Bellefonte plant while you were commissioner?	18 Q. Was there any discussion at the Commission
19 A. No. There was nothing that came to the	19 level or among the commissioners regarding TVA's
20 Commission for its determination or action when I was	20 decision to sell the Bellefonte site?
21 a commissioner.	21 MR. LEMBKE: Objection, compound question.
Page 42	Page 44
1 Q. Were there any matters pending before the	1 BY MR. O'REAR:
2 NRC regarding the Bellefonte plant while you were a	2 Q. Was there any discussion among your
3 commissioner?	3 commissioners about TVA's decision to sell the
4 A. Well, I believe that the Nuclear	4 Bellefonte site?
5 Development's application was filed with the staff in	5 A. Not that I'm -- not that I can recall.
6 November of 2018. So I was still -- I was a	6 Q. Did you have any communications with anyone
7 commissioner then, but that was not something that	7 at TVA about the decision to sell the Bellefonte site?
8 came -- that was not before the commissioners at that	8 A. Not that I can recall.
9 time.	9 Q. Do you think you may have?
10 Q. Okay. And that application that was filed	10 A. No, I don't.
11 while you were a commissioner remains pending today.	11 Q. You said there was a drop-in meeting with
12 Is that correct?	12 the -- with Nuclear Development representatives?
13 A. That's my understanding.	13 A. That's correct.
14 Q. Were you aware that TVA in April of 2016	14 Q. And when did that happen?
15 decided to declare the Bellefonte plant as surplus	15 A. I believe it was in -- it was in early 2017.
16 property to sell it?	16 I think it was like April 2017.
17 A. In terms -- I'm not sure I understand. I	17 The reason I say that, because I know I was
18 understand the subject of the question, but I'm not	18 removed by Mr. Trump as chairman by that time.
19 sure I understand the time frame you're talking about.	19 Q. Okay. So you were actually removed as
20 Q. The time frame is May or April -- excuse	20 chairman by President Trump?
21 me -- of 2016.	21 A. Right, that's the president's authority.

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<p style="text-align: right;">Page 45</p> <p>1 Q. Right. But that's why you moved from the 2 chairmanship to --</p> <p>3 A. That's correct. Because you have -- you 4 have the term and the term runs until it expires or 5 unless you're removed.</p> <p>6 Q. Okay. And, so, you recall the drop-in 7 meeting occurred after that?</p> <p>8 A. Yes, as I say, I recall it was early spring. 9 I think it was April of 2017.</p> <p>10 Q. Okay. I'll ask you about that in a few 11 minutes. Let me ask you this.</p> <p>12 Were you aware that TVA actually entered 13 into a contract in 2016 with Nuclear Development to 14 sell the Bellefonte site?</p> <p>15 MR. LEMBKE: Where, when?</p> <p>16 MR. O'REAR: Ever aware.</p> <p>17 MR. LEMBKE: Even today?</p> <p>18 MR. O'REAR: No.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. While you were at the NRC?</p> <p>21 A. Well, I think -- you know, I couldn't</p>	<p style="text-align: right;">Page 47</p> <p>1 weekly or biweekly meetings mentioned it. But I don't 2 have any particular recollection.</p> <p>3 Q. And who was the executive director of 4 operations at that time?</p> <p>5 A. At that point it was Victor McCree, M-C, 6 C-R-E-E.</p> <p>7 Q. Okay. Do you know -- do you recall anything 8 being discussed in particular?</p> <p>9 A. No, I do not.</p> <p>10 Q. Do you recall any discussion within the NRC 11 about whether this was a good thing or not that TVA 12 was selling the Bellefonte site to a potential 13 merchant operator?</p> <p>14 A. Could you repeat that?</p> <p>15 Q. Did you have any communications with anyone 16 within the NRC about whether this was a good thing or 17 not a good thing, that TVA would be selling the 18 Bellefonte site to a merchant operator?</p> <p>19 A. No. That is not -- that kind of framework 20 is not something that would have come up, whether it 21 was good or bad.</p>
<p style="text-align: right;">Page 46</p> <p>1 pinpoint when I might have become aware of it or 2 exactly what I became aware of.</p> <p>3 I certainly think probably in that drop-in 4 meeting, Nuclear Development probably communicated 5 that.</p> <p>6 Q. That there was a contract?</p> <p>7 A. No. There was some sort of an arrangement.</p> <p>8 Q. Did you ever -- while you were at the NRC, 9 did you ever see the contract between Nuclear 10 Development and TVA?</p> <p>11 A. No.</p> <p>12 Q. Did you have any communications with anyone 13 at TVA about the contract that had been entered into 14 with Nuclear Development?</p> <p>15 A. No.</p> <p>16 Q. Did you have any communications with any 17 staff of the NRC about -- while you were at NRC, with 18 the staff of NRC about TVA's decision to sell the 19 Bellefonte site?</p> <p>20 A. I don't recall any. It is conceivable that 21 the executive director for operations in one of our</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. While you were at the NRC, were you aware 2 that there was a closing date scheduled for the sale 3 of the plant to Nuclear Development in November of 4 2018?</p> <p>5 A. I don't have any particular recollection of 6 discussing that or noting that. I think probably the, 7 you know, people in the Agency and I may well have 8 received some communication of it in November of 2018, 9 but I don't have any particular recollection.</p> <p>10 Q. And if someone in the Agency had received a 11 communication, who would the communication have been 12 from?</p> <p>13 MR. LEMBKE: Objection, calls for 14 speculation.</p> <p>15 MR. O'REAR: Well, he recalls some 16 communication.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Who would it have been from?</p> <p>19 MR. LEMBKE: No, he -- no, wait a minute.</p> <p>20 Object to the form. That misstates his testimony. He 21 said he didn't recall any communications.</p>

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<p>1 BY MR. O'REAR:</p> <p>2 Q. I thought you said that there may have been</p> <p>3 some communication about that. Did you not?</p> <p>4 A. As I say, I don't recall any particular</p> <p>5 communication. Staff -- it conceivably may have had</p> <p>6 information relayed by the staff, the NRC staff. But</p> <p>7 I -- again, I don't have any particular recollection.</p> <p>8 Q. Were you aware that Nuclear Development sued</p> <p>9 TVA for breach of contract for refusing to close while</p> <p>10 you were at the NRC?</p> <p>11 MR. LEMBKE: Okay. You can go ahead.</p> <p>12 THE WITNESS: Actually I don't have any</p> <p>13 particular recollection of learning of a suit between</p> <p>14 the two parties.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. Is it correct to say that while you were at</p> <p>17 the NRC, you have no recollection of knowing that</p> <p>18 there was a lawsuit between TVA and Nuclear</p> <p>19 Development over the contract?</p> <p>20 A. What I'm saying is I had no particular</p> <p>21 awareness of the lawsuit between the two parties.</p>	Page 49	<p>1 Q. Have you seen the document before today?</p> <p>2 A. Yes, I believe I have.</p> <p>3 Q. All right. And can you identify it as a</p> <p>4 summary of a public meeting NRC held on August the</p> <p>5 14th, 2018 regarding the Bellefonte site, Nuclear</p> <p>6 Development's desire to submit a request for transfer</p> <p>7 of the construction permit?</p> <p>8 A. Well, that's how the memo describes itself</p> <p>9 as a meeting -- a meeting on the pre-submittal of an</p> <p>10 application. A pre-submittal of a request. A</p> <p>11 transfer, I should say.</p> <p>12 Q. And when did you first see this document?</p> <p>13 A. I probably first saw it when I was doing</p> <p>14 some of my research for the expert report.</p> <p>15 Q. Okay. So it is your testimony you did not</p> <p>16 see this memo while you were a commissioner at the</p> <p>17 NRC?</p> <p>18 A. I don't recall seeing it then. And I think</p> <p>19 looking at the general distribution on Page 2, it is</p> <p>20 not something that typically would go to the -- come</p> <p>21 up to the Commission.</p>	Page 51
<p>1 Q. At any time while you were at the NRC?</p> <p>2 A. Yes, I don't -- I just don't recall it.</p> <p>3 Q. If you would look at your exhibits there,</p> <p>4 the next exhibit should be Exhibit 11.</p> <p>5 A. Yes.</p> <p>6 Q. You see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Can you identify Exhibit 11 as a</p> <p>9 September 4, 2018 memorandum from the NRC from Mr.</p> <p>10 Billy Gleaves, a project manager that contains a</p> <p>11 summary of a public meeting that occurred on August</p> <p>12 the 14th, 2018?</p> <p>13 MR. LEMBKE: I'm going to object to the</p> <p>14 form, lack of foundation.</p> <p>15 MR. O'REAR: I'm asking him if he can</p> <p>16 identify it as such.</p> <p>17 MR. LEMBKE: Well, you haven't established</p> <p>18 that he's ever seen this document before.</p> <p>19 MR. O'REAR: Well, he can answer.</p> <p>20 THE WITNESS: What's the question, again?</p> <p>21 BY MR. O'REAR:</p>	Page 50	<p>1 Q. Were you aware that a public meeting -- that</p> <p>2 this public meeting had occurred while you were a</p> <p>3 commissioner at the NRC?</p> <p>4 A. I don't think I was aware of that.</p> <p>5 Q. Did you have any discussion of a public</p> <p>6 meeting that the NRC conducted in August of 2018</p> <p>7 regarding Bellefonte with anyone at the NRC?</p> <p>8 MR. LEMBKE: While he was at the NRC?</p> <p>9 MR. O'REAR: Yes, in a discussion with</p> <p>10 anyone at the NRC.</p> <p>11 THE WITNESS: I don't recall any discussion</p> <p>12 of it.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Okay. I note there were 16 attendees at the</p> <p>15 meeting from the NRC. It notes that David Roth, OGC,</p> <p>16 was present.</p> <p>17 A. Correct.</p> <p>18 Q. Was he the general counsel?</p> <p>19 A. No.</p> <p>20 Q. Just in the Office of General Counsel?</p> <p>21 A. The Office of General Counsel. He might</p>	Page 52

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1 have had some supervisory role at that point. I just 2 don't recall.	1 A. I don't recall any particular discussion 2 about the application. And actually at this point in 3 time, I'm not sure I recall -- at this point in time, 4 Mr. McCree was no longer the executive director for 5 operations.
3 Q. Have you ever had any discussions with him 4 about this meeting?	6 Q. Okay. Did you have any -- well, when he was 7 director -- executive director of operations, did you 8 have any communication with him regarding the 9 Bellefonte site?
5 A. No.	10 A. I don't recall any particular communication 11 with him.
6 Q. Have you ever had a discussion with him 7 about the Bellefonte site in general?	12 Q. Are you aware that he met with officials of 13 Nuclear Development prior to your drop-in meeting with 14 them?
8 A. No.	15 A. Aware now or aware then?
9 MR. LEMBKE: If this is a point, let's take 10 a short break.	16 Q. Were you aware then?
11 MR. O'REAR: Okay. Let's do that.	17 A. I don't have any particular recollection of 18 being made aware of his meeting, if he had meetings or 19 whatever they were with Nuclear Development.
12 MR. LEMBKE: Great.	20 I mean, my only -- the only thing I recall 21 is the drop-in visit, which happened as I think in
13 MR. O'REAR: How long? Five minutes?	
14 MR. LEMBKE: Five minutes is fine.	
15 MR. O'REAR: Thanks.	
16 (Whereupon, a recess ensued.)	
17 MR. O'REAR: Back on the record.	
18 BY MR. O'REAR:	
19 Q. Mr. Burns, would you look at Exhibit 82 that 20 should be in your stack there?	
21 (Burns Exhibit No. 82 was marked for	
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1 identification.)	1 March or April of 2017.
2 THE WITNESS: Yes, I have it.	2 Q. Okay. Well, tell us what you remember about 3 that?
3 BY MR. O'REAR:	4 A. The drop-in meeting?
4 Q. If you would turn to the second page, it is 5 a letter dated November 13, 2018 from Nuclear 6 Development containing the application for an order 7 approving the construction permit transfers. Do you 8 see that?	5 Q. Yes.
9 A. Yes, I see that.	6 A. About all I recall of that, it was drop-in.
10 Q. Did you ever see this application while you 11 were at the NRC?	7 I think Mr. Blust, I think Mr. McCollum, there may 8 have been one other person there, I don't remember.
12 A. I don't recall seeing it.	9 But it was just a brief meeting, probably somewhere on 10 the order of 20 to 30 minutes, where they were 11 introducing themselves and indicating they -- their 12 plan. They were planning to acquire the Bellefonte 13 project and they were hoping to continue it to 14 completion of construction.
13 Q. When do you recall first seeing it?	15 Q. Did you express to them support for the 16 Bellefonte project that they envisioned?
14 A. I probably first saw it when I started doing 15 some of the work as an expert for TVA.	17 A. No, I would not have done that. Not in that 18 type of context.
16 Q. And did you have any discussion while you 17 were at the NRC with anyone at the NRC about the 18 application?	19 Q. Did you know during that meeting that they 20 had entered into a contract with TVA to purchase the 21 site?
19 A. No.	
20 Q. Have you ever talked to Victor McCree about 21 the application?	

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1 A. Again, I don't recall particularly what was 2 related during the meeting other than at the high 3 level I recall, yes, their attention was to proceed to 4 obtain the Bellefonte site and to proceed with its 5 construction and hopefully bring it into operation as 6 an operable nuclear power station.	1 the Commission at that time were then Chairman 2 Svinicki and Commissioner Baran, B-A-R-A-N. 3 Q. Okay. And do you know that they met with 4 them? 5 A. I believe that's the case. 6 Q. Did you have any discussions with 7 Commissioner Svinicki or Commissioner Baran about 8 their meetings with Nuclear Development?
7 Q. And so in order to proceed with 8 construction, they would need construction permits, 9 correct?	9 A. Not that I recall. 10 Q. Do you know whether any of the commissioners 11 asked Nuclear Development for support in Congress for 12 proposed budgets for the NRC?
10 A. Correct.	13 A. I have no knowledge of that. 14 Q. And you had no such discussions. Is that 15 correct?
11 Q. And so was there a discussion by them that 12 they intended to file an application with the NRC for 13 transfer of the construction permit?	16 A. I -- 17 MR. LEMBKE: Objection, asked and answered. 18 You can answer it again.
14 A. Well, I think it -- again, at a high level 15 they would have communicated that they were intending 16 to obtain construction permits because they have to 17 have construction permits to do anything on the site.	19 THE WITNESS: As I said, that is not 20 typically something I would do.
18 Q. And what, if anything, did you say to the 19 Nuclear Development representatives when you met with 20 them?	21 BY MR. O'REAR:
21 A. I don't have any recollection of particular	
Page 58	Page 60
1 things I may have said. 2 Q. Did you have any discussion with them about 3 the NRC's budget requirements?	1 Q. Okay. Well, whether it's typically 2 something you would do or not, your answer is no. Is 3 that correct?
4 A. I don't recall discussing the budget aspect 5 of it.	4 A. No. 5 Q. Did you have any discussions with Nuclear
6 Q. Did you have any discussion with them in 7 which you asked for their assistance in encouraging 8 Congress to approve an NRC budget?	6 Development about the fees it would be required to pay 7 the NRC for submitting an application for transfer of 8 construction permit?
9 A. I don't recall doing that and that's not 10 typically something I would do.	9 A. I don't recall any such discussion. 10 Q. Let me make sure I understand your answer to 11 this.
11 Q. Did you have any communications -- were you 12 aware that they were having meetings with other 13 commissioners on the same day?	12 Are you saying you were not aware that 13 representatives of Nuclear Development had met with 14 NRC -- NRC staff personnel prior to their meeting with 15 the commissioners?
14 A. I -- basically, yes. Whether it was going 15 to all happen that same day. But generally in these 16 types of meetings, if you're coming in to see one 17 commissioner, you're coming in to see all. So I think 18 I was generally aware that that was happening.	16 A. No, I think I had an awareness that there 17 was engagement between Nuclear Development and the NRC 18 staff. But I don't have, you know, any particular 19 recollection of what was communicated to me or, you 20 know, details -- the details of the meeting. I just, 21 I don't have a recollection of that.
19 Q. Do you know what other commissioners they 20 met with that day?	
21 A. Well, the only two other commissioners on	

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<p style="text-align: right;">Page 61</p> <p>1 Q. And is it your testimony that after you met 2 with the Nuclear Development representatives, that you 3 don't recall any communications with NRC staff about 4 Nuclear Development or Bellefonte?</p> <p>5 A. I don't recall of any. I don't, you know, 6 there is nothing that I can -- to the extent I recall 7 anything of the meeting that would have prompted me to 8 reach out to the staff at that point.</p> <p>9 Q. Well, I'm just asking for any communication 10 whether you reached out to them or they reached out to 11 you?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Now, when you were at the NRC over the 14 entire period of time that you were there, did you 15 have a high volume of communications with TVA 16 regarding matters before the NRC?</p> <p>17 A. I'm not sure I understand what you mean by a 18 high volume.</p> <p>19 Q. Okay. What I was trying to get some general 20 sense before I ask the question, tell us about all 21 your communications with TVA while you were at the</p>	<p style="text-align: right;">Page 63</p> <p>1 like, and probably some work with respect to -- well, 2 not probably, I know some work with respect to Watts 3 Bar and the completion of the Watts Bar Unit One, back 4 in the 1990s. And then sort of taking Watts Bar two 5 out of the deferred status and completing it. I 6 visited Watts Bar as a commissioner fairly early in my 7 term and that's probably -- that's probably it.</p> <p>8 Q. What was the purpose for your visit to Watts 9 Bar when you were a commissioner?</p> <p>10 A. The purpose is, one of the things 11 commissioners do and here I take lead from my boss in 12 the late 1980's, Admiral Carr, who basically made it 13 his practice, that he was the one that sort of started 14 the Commission tradition of -- he got to every 15 operating nuclear power plant. And so I think what 16 commissioners have done since then -- I never got to 17 that level -- but commissioners as part of our sort of 18 making sure we understand what's going on in the 19 regulating community, we go out and we visit -- we 20 visit plant sites, not only power plants but medical 21 centers, things like that.</p>
<p style="text-align: right;">Page 62</p> <p>1 NRC?</p> <p>2 A. And this is over what period? My entire 3 career?</p> <p>4 Q. Yes.</p> <p>5 A. Well, I think -- again, we are talking 6 about, you know, close to 40 years.</p> <p>7 There were probably several matters that I 8 was assigned to early in my career that might have 9 involved either a petition for enforcement action 10 under Section 2206 involved TVA.</p> <p>11 I know I do recall being involved in some 12 what I'll call enforcement matters due to quality 13 assurance issues that arose at TVA in the mid -- in 14 the mid 1980s.</p> <p>15 So I -- again, so there may have been 16 communications with TVA counsel at that time. But, 17 you know -- well, my recollection is more is working 18 on some matters.</p> <p>19 And sort of since that time -- again, the 20 matters that would have come up with TVA, you know, we 21 discussed earlier with respect to Bellefonte and the</p>	<p style="text-align: right;">Page 64</p> <p>1 So my purpose was here you had Watts Bar 2 unit two which was in the unusual situation that it 3 had -- that basically construction and movement 4 towards operation had been suspended -- actually it 5 may have been in the 1980s. But certainly, by the 6 1990s, and it was moving toward -- it had start -- 7 TVA decided to restart the project and it was moving 8 toward completion.</p> <p>9 So going out there to see what challenges 10 they had, see what the progress was, that's what was 11 the purpose of the trip.</p> <p>12 And as I say, that's probably, you know, one 13 of a couple dozen trips domestically I made to power 14 plants or other licensed facilities.</p> <p>15 Q. And who did you meet with at TVA when you 16 were on that trip?</p> <p>17 A. He is now gone. Mike Tardi -- I think it's 18 -- I don't recall -- I got his last name wrong, but he 19 was in the position, it's sort of like the chief -- I 20 think he was the chief nuclear officer at the time. 21 And there were probably some other TVA -- there were</p>

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1 certainly some other TVA folks there who were either	1 specific assignments.
2 -- accompanied us on the trip or met with us during	2 Q. And you would know whether he worked on any
3 the visit.	3 licensing matters under you or not?
4 Q. Was the TVA CEO at that trip?	4 A. Again, I don't have a particular
5 A. Not that I recall.	5 recollection of where he was assigned within the
6 Q. Do you know who the CEO was at the time?	6 office. As I recall, he began -- came to the Agency
7 A. Actually no, I don't.	7 through our honors program and part of the honors
8 Q. Do you know Bill Johnson?	8 program is it has a structured rotational assignment
9 A. No. I may have met him, but I don't really	9 in different areas of the office through the year. I
10 know him.	10 don't have a recollection of what those assignments
11 Q. Did you know he was the CEO of TVA for a	11 were.
12 period of time?	12 Q. I believe you testified you were involved in
13 A. Well, I've seen that name as CEO. And	13 the process where TVA sought withdrawal of the
14 probably in some of my -- looking at some documents	14 construction permits and later sought reinstatement of
15 here.	15 those permits. Is that correct?
16 Q. Do you recall ever having any communications	16 A. I would have supervised staff and provided
17 with Bill Johnson regarding any matters concerning	17 some counsel with respect to legal matters related to
18 TVA?	18 those issues, yes.
19 A. No, I do not.	19 Q. Do you know whether Mr. Chandler worked on
20 Q. Are there any personnel currently at TVA	20 any of those issues while he was at the NRC?
21 that you're particularly close to?	21 A. I have no -- no idea.
Page 66	Page 68
1 A. No. There are a few people I know but	1 Q. Who at TVA contacted you to be an expert
2 there's no one I would say I'm close to.	2 witness in this case?
3 Q. Who do you know that's presently at TVA?	3 A. Initial contact was through Mr. Chandler.
4 A. I know Joe Shea and I know Chris Chandler.	4 Q. Now, Mr. Shea worked for the NRC for a long
5 But actually -- you know, I've obviously met Mr. Chin	5 while, did he not?
6 and Mr. Alif in this process.	6 A. Yes, he did.
7 Q. And Mr. Chandler formerly worked at the NRC.	7 Q. And did you work with Mr. Shea while he was
8 Is that correct?	8 at the NRC?
9 A. Mr. Chin? Not that --	9 A. I would have had some interactions with him.
10 Q. Mr. Chandler, not Mr. Chin.	10 He was in the NRC's regional office in Atlanta and I
11 A. Chandler? Mr. Chandler did work at the NRC.	11 believe he also worked in the headquarters office, but
12 Q. Did you know him when he worked at the NRC?	12 I don't recall where.
13 A. Yes.	13 So I would have had some interactions with
14 Q. Okay. Did he work with you or under you	14 him on occasion, but nothing in particular that I can
15 when he was at the NRC?	15 recall.
16 A. He would have worked under me because I was	16 Q. Okay. And he worked with NRC for 19 years.
17 the general counsel. So all staff in the office	17 Did you work with him on any licensing matters?
18 reported to me ultimately.	18 A. I don't recall working on any particular
19 Q. Did he work on any adjudicatory opinions	19 licensing matters with him.
20 when he was at the NRC?	20 Q. Have you communicated with Mr. Shea since
21 A. I don't have any recollection of his	21 you left the NRC?

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1 A. I have had a communication with him, yes.	1 TVA?
2 Q. Tell me about that.	2 A. No, I do not.
3 A. Well, that communication has nothing to do	3 Q. Have you had any discussions with former TVA
4 with the dispute between Nuclear Development and	4 personnel regarding the Bellefonte site?
5 Tennessee Valley Authority. He was asking me	5 A. Ever?
6 something with respecting a personnel matter involving	6 Q. Well, while you were a commissioner, did you
7 himself.	7 have any communications with former TVA personnel
8 Q. While you were at the NRC, did you ever have	8 regarding the Bellefonte site?
9 any communication with Mr. Shea about the Bellefonte	9 A. I don't recall any conversations with former
10 plant site?	10 personnel.
11 A. I have no recollection of any.	11 Q. Since you've left the NRC, have you had any
12 Q. Well, do you recall whether Mr. Shea	12 conversations or communications with any former TVA
13 participated on any kind of drop-in calls with you	13 personnel regarding the Bellefonte site?
14 when you were a commissioner?	14 A. No.
15 A. I don't have any particular recollection of	15 Q. Have you ever communicated with any member
16 who would have -- who participated in any drop-ins	16 of the TVA board of directors?
17 from TVA.	17 A. No.
18 Q. Did TVA have regular drop-ins with the	18 Q. Ever?
19 commissioners?	19 A. Right. I have no recollection of a -- such
20 A. Yes. I would say perhaps about once a year.	20 communication.
21 Q. Okay. You indicated -- I'm not ask you	21 Q. You have no recollection of meeting with Mr.
Page 70	
1 about the detail of it -- but Mr. Shea, did he call	1 Shea to discuss the Bellefonte site in June of 2017?
2 you regarding a personnel matter after you left the	2 A. No, I don't recall that.
3 NRC?	3 Q. Did you have any communications with anyone
4 A. Yes, he contacted me.	4 at TVA while you were at the NRC about the lawsuit,
5 Q. Okay. Do you consider yourself --	5 this lawsuit between Nuclear Development and TVA?
6 A. He contacted me by e-mail, and then we spoke	6 A. Repeat the question, please.
7 by phone.	7 Q. While you were at the NRC, did you have any
8 Q. Do you consider yourself a friend of Mr.	8 communications with anyone at TVA about this lawsuit?
9 Shea's?	9 A. I don't recall any communications with TVA
10 A. No.	10 folks regarding this lawsuit while I was at NRC.
11 Q. Do you consider yourself a friend of Mr.	11 Q. And other than your conversations with Mr.
12 Chandler's?	12 Ayliffe and Mr. Chandler -- Mr. Chandler, excuse me --
13 A. No.	13 have you had any communications since you left the NRC
14 Q. Are you personally acquainted with any other	14 with anyone at TVA concerning this lawsuit? I believe
15 current TVA personnel?	15 you said Mr. Chandler contacted you.
16 MR. LEMBKE: Other than Mr. Chandler and Mr.	16 A. It was Mr. Chandler who basically introduced
17 Ayliffe?	17 me to Mr. Ayliffe.
18 MR. O'REAR: Yes, I'm not including them.	18 Q. Anyone else?
19 THE WITNESS: Current personnel, no.	19 A. No.
20 BY MR. O'REAR:	20 Q. Okay. If you would look in your stack of
21 Q. Do you know the current general counsel of	21 exhibits -- and I don't think all of these are going

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<p style="text-align: right;">Page 73</p> <p>1 to be in exact order -- but I would like for you to 2 find an exhibit that is a pleading in the case 3 captioned: Defendant's Unopposed Motion to Amend 4 Scheduling Order.</p> <p>5 A. Yes, I have it.</p> <p>6 Q. All right.</p> <p>7 MR. O'REAR: Now, would you mark that 8 Exhibit 200, please?</p> <p>9 (Burns Exhibit No. 200 was marked for 10 identification.)</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. And I've asked counsel to mark their own 14 copies as 200 also. Okay.</p> <p>15 We may need to refer to this, but let me ask 16 you these questions first. When did Mr. Chandler call 17 you about being an expert witness in this case?</p> <p>18 A. Well, he first e-mailed me and he e-mailed 19 me, I think it was about February 14th, 2020.</p> <p>20 Q. Okay. What did his e-mail say?</p> <p>21 A. He asked whether I might be available to</p>	<p style="text-align: right;">Page 75</p> <p>1 the pocket until the very end of February. 2 And then after -- so after February 14th, 3 when he received my reply he said, well, we can try to 4 talk when you come back. You know, basically I was 5 not going to be easily reachable.</p> <p>6 Q. Okay. Did you have any communications with 7 him before you -- before you went on your trip -- 8 strike that.</p> <p>9 So he sent you an e-mail February the 14th, 10 and then there was a follow up call on that day where 11 you told him you were out of pocket for two weeks?</p> <p>12 A. No, no. It was not a follow up call.</p> <p>13 I returned -- I replied to his e-mail. I 14 called him. And so, yeah, I did not speak to him.</p> <p>15 First I said, I'm gone for the next two weeks. Happy 16 to chat when I get back.</p> <p>17 Q. But did you accept the engagement on 18 February the 14th during this exchange of e-mails?</p> <p>19 A. No, I said I'd be happy to talk. And get -- 20 you know, obtain more information about what, you 21 know, why he was contacting me.</p>
<p style="text-align: right;">Page 74</p> <p>1 discuss a matter. I don't recall specifically how 2 detailed he was in terms of this, but I think he 3 identified it, wanted to discuss a matter that TVA was 4 in litigation over.</p> <p>5 Q. So did he advise you of -- of the 6 litigation, who it involved and what the subject was?</p> <p>7 A. I don't recall the content of his e-mail.</p> <p>8 Q. Okay. And that was, you say, February the 9 14th?</p> <p>10 A. I think February the 14th.</p> <p>11 Q. 2020, this year?</p> <p>12 A. 2020.</p> <p>13 Q. All right. Then you had a conversation with 14 him after that?</p> <p>15 A. I did. When he sent the e-mail on 16 February 14th, I was sitting basically in the 17 departure lounge at Dulles Airport on my way to France 18 because I had an obligation with NEA to teach in their 19 nuclear law program for the week, and then my wife and 20 I were going to take another week vacation. So I was 21 going to be out of the country and basically out of</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. And, so, on that day you didn't know 2 anything about the lawsuit at all. Is that right?</p> <p>3 A. Again, I don't recall the content 4 specifically of his e-mail. He may have described in 5 general that, you know, there was the issue pending. 6 So I think it's fair to say I understood that there 7 was a lawsuit at that time. But more detail than 8 that, I did not have at that time.</p> <p>9 Q. Okay. Do you have the e-mail there?</p> <p>10 A. I --</p> <p>11 Q. Is it in there?</p> <p>12 A. I don't know if I still have it or not.</p> <p>13 Q. Could you find it?</p> <p>14 MR. LEMBKE: Wait one minute. This is 15 inappropriate because you have not served any subpoena 16 on him or a document request related to it. So we're 17 not going to engage in on the spot document discovery.</p> <p>18 MR. O'REAR: I'm just asking him if he has 19 it there, if it will refresh his recollection.</p> <p>20 MR. LEMBKE: Mr. Burns, let's do -- that's 21 inappropriate in a deposition. If you want to present</p>

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<p>1 a document to him to refresh his recollection you may, 2 but it's not appropriate to have him start rummaging 3 through files looking for something to refresh his 4 recollection.</p> <p>5 MR. O'REAR: I'm not asking him to rummage. 6 If he's got it there, he can answer the question. I 7 think it would be helpful.</p> <p>8 MR. LEMBKE: Let's proceed with the 9 question.</p> <p>10 MR. O'REAR: Are you telling him not to do 11 that?</p> <p>12 MR. LEMBKE: I don't think that's 13 appropriate. He has not been served a subpoena nor 14 has there been any document request for that 15 information.</p> <p>16 MR. O'REAR: I understand that. But I --</p> <p>17 MR. LEMBKE: And so I don't think that's 18 appropriate to engage in discovery on the spot. 19 So I'm going to tell him if you want to 20 serve a subpoena or document request, we'll respond 21 appropriately. But we're not going to do it without</p>	<p>Page 77</p> <p>1 e-mail. Certainly by the time I was returning from 2 France or it was actually from Italy at the time a few 3 days before we had our phone call, I understood that. 4 He did transmit to me in another e-mail 5 which is more likely -- it's probably around the 27th 6 or 28th of February about the time I came back, he 7 provided me, I think, some of the initial -- some of 8 the pleadings in the case in terms of TVA's motion to 9 dismiss and the ND's reply.</p> <p>10 Q. So you were on this trip and returned on 11 February 28th?</p> <p>12 A. I believe it was the 28th.</p> <p>13 Q. And if he sent you materials in the lawsuit 14 on the 27th or the 28th by e-mail?</p> <p>15 A. Correct.</p> <p>16 Q. What did he send you at that time?</p> <p>17 A. My recollection is he sent me the -- I think 18 TVA's motion -- the defendant's motion to dismiss and 19 then the plaintiff's or ND's reply to that.</p> <p>20 Q. And did Mr. Chandler say anything to you in 21 any of these e-mails about what he wanted testimony</p>
<p>1 such a request.</p> <p>2 MR. O'REAR: I'm not asking for the 3 document. I'm asking him to look at the e-mail so 4 that he can answer the question.</p> <p>5 MR. LEMBKE: He is not -- we're not going to 6 do that today.</p> <p>7 MR. O'REAR: All right.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. Do you agree with that, Mr. Burns?</p> <p>10 A. Yes.</p> <p>11 Q. You're not going to do that?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 All right. When you had this initial e-mail 15 exchange with Mr. Chandler, did you know Nuclear 16 Development was in a lawsuit with TVA?</p> <p>17 A. I think I did know that, yes.</p> <p>18 Q. Did he tell you that he was calling you 19 about a lawsuit between Nuclear Development and TVA, 20 or he was contacting you about that?</p> <p>21 A. Again, I don't recall the specifics in that</p>	<p>Page 78</p> <p>1 on?</p> <p>2 A. At that point it was a question whether I 3 would be willing to discuss it.</p> <p>4 Q. But he didn't say what he was seeking your 5 opinion on?</p> <p>6 A. Well, I think he wanted to discuss it and I 7 think he was looking for my reaction to it.</p> <p>8 Q. Thank you.</p> <p>9 A. Well, we weren't discussing -- as I say I 10 hesitate to say we were discussing at that particular 11 point whether or not I would be willing to serve as an 12 expert.</p> <p>13 Q. And you didn't know what you were going to 14 be serving as an expert on, on what subject?</p> <p>15 A. Well, by implication the issues that are the 16 back and forth in that set of pleadings. It's on the 17 issue of whether or not TVA could proceed with the 18 transfer of the site without a construction -- with 19 the construction permit authorization having also been 20 approved.</p> <p>21 Q. And was that communicated to you by Mr.</p>

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1 Chandler or you're saying you learned that only by 2 implication?	1 first contacted Mr. Burns, TVA learned that Mr. Burns 2 was on a trip to France from February 14 through 3 February 28, 2020." Do you see that?
3 A. Well, I certainly saw it there. He may have 4 highlighted that. I don't have a specific 5 recollection of the contents. These are relatively 6 short e-mails.	4 A. Yes, I do. 5 MR. LEMBKE: Same objection.
7 Q. And, so, when did you accept that 8 engagement?	6 BY MR. O'REAR: 7 Q. Is that a true statement?
9 A. I think I accepted the engagement early the 10 next week. So I don't know what the dates are on 11 that. Somewhere from March 3rd to fifth.	8 A. It what a true statement?
12 Q. Well, let's look at Exhibit 200 that you 13 have before you.	9 Q. That when TVA contacted you, that TVA 10 learned that you were on a trip from France -- to 11 France from February 14th to February 28th?
14 A. All right.	12 MR. LEMBKE: Objection, lack of foundation.
15 Q. You have it there?	13 BY MR. O'REAR: 14 Q. You can answer.
16 A. I have it.	15 A. It's essentially correct except for the fact 16 the that I also went to Italy.
17 Q. Okay. If you would look on the second page, 18 Paragraph 4. It says, "On or about February 14, 2020, 19 TVA identified Stephen G. Burns as the best person to 20 serve as its expert in this field." Do you see that 21 sentence?	17 Q. Okay. Turn to the next page, Paragraph 6. 18 It says, "On March 2nd, 2020, Mr. Burns agreed to 19 serve as an expert for TVA." 20 Do you see that?
	21 A. Yes.
Page 82	Page 84
1 MR. LEMBKE: Object to the form, lack of 2 foundation.	1 MR. LEMBKE: Same objection.
3 BY MR. O'REAR:	2 BY MR. O'REAR:
4 Q. Do you see that?	3 Q. Is that a true statement?
5 MR. LEMBKE: Same objection.	4 A. I think it is. As I say, I don't have my 5 notes in front of me. But as I said earlier, my 6 agreement was, you know, early in that week of 7 following my return from your Europe.
6 BY MR. O'REAR:	8 Q. But with that as a true statement, on 9 March 2nd, 2020, what did you agree to do for TVA?
7 Q. Do you see that?	10 A. I agreed to prepare an expert report.
8 You can answer the question.	11 Q. All right.
9 MR. LEMBKE: Same objection.	12 A. I prepared the expert report.
10 BY MR. O'REAR:	13 Q. On what?
11 Q. Do you see that sentence?	14 A. On the issues -- well, on the issues that 15 are covered in my expert report. So whether or not I 16 believe, based on my experience and analysis that a 17 transfer of the site without a concurrent transfer or 18 authorization to transfer the construction permit was 19 a valid approach.
12 MR. LEMBKE: Same objection.	20 Q. And had you formed that opinion on March the 21 2nd, 2020?
13 You can answer, Mr. Burns.	
14 THE WITNESS: Well, I see the sentence on 15 the document. Yes.	
16 BY MR. O'REAR:	
17 Q. All right. And do you know anything about 18 how TVA identified you as the best person to serve as 19 an expert in this field?	
20 A. No, I do not.	
21 Q. Look at Paragraph 5. It says, "When TVA	

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1 A. Well, I had -- again, based on my experience	1 this deposition?
2 -- long experience at the NRC and my understanding of	2 A. That's the rate.
3 how things should work and from the position of a	3 Q. You also issued a supplement to your report.
4 regulator, that was my essential conclusion.	4 Is that correct?
5 Now, as -- when I worked through, you know,	5 A. That is correct.
6 documentation, I read other things that were related	6 Q. Who asked you to do that?
7 to this, you know, I looked at those things to see	7 A. TVA.
8 whether anything changed my mind and it did -- they	8 Q. Okay. What was that assignment?
9 did not.	9 Well, who at TVA -- who at TVA?
10 Q. Did you enter into a written engagement with	10 A. Well, counsel.
11 TVA?	11 Q. Which counsel?
12 A. I believe, yeah, I believe-- I believe there	12 A. Well, it would have been Mr. Ayliffe, Mr.
13 is or at least an e-mail exchange with respect to an	13 Chandler in consultation with Mr. Lembke.
14 agreement to serve.	14 Q. And what were you asked to do in this second
15 Q. Who was that communication with at TVA?	15 engagement?
16 A. That would have been with Mr. Ayliffe.	16 A. In the supplemental report?
17 And I probably also then -- there was	17 Q. Yes.
18 documentation that their administrative officers would	18 A. I addressed matters that were raised by Mr.
19 have sent me.	19 Matthews in his the deposition, which -- which were
20 Q. Okay.	20 not -- would not have come up in my original report
21 A. That did not occur until at least later that	21 which seemed to need some addressing or rebuttal.
Page 86	Page 88
1 week.	1 Q. Did you enter another engagement letter --
2 Q. The documentation engagement?	2 A. No.
3 A. Formality.	3 Q. -- for that assignment?
4 Q. Was that a written engagement agreement?	4 A. No.
5 A. There was some -- there was some written	5 Q. Did you contact the -- is there an ethics
6 document, yes, that I provided to them.	6 office at the NRC?
7 Q. Okay.	7 A. Yes. In fact as general counsel, I'm the
8 A. I don't have that here and I don't recall	8 designated Agency ethics officer.
9 the specifics of how it's written.	9 Q. You were when you were general counsel?
10 Q. Do you recall anything about that document	10 A. When I was general counsel.
11 that defines the scope of your work?	11 Q. Is the current general counsel the
12 A. Well, again, I don't have a specific	12 designated Agency ethics officer?
13 recollection of the contents of the document. The	13 A. Yes.
14 scope of the work is as I described it and as set	14 Q. Who is that? `
15 forth in my expert report.	15 A. Marian Zobler, Z-O-B-L-E-R.
16 Q. And your rate -- I believe you state in your	16 Q. Did you contact her office regarding any
17 report is \$500 per hour?	17 advice or consent regarding this request for an
18 A. That's correct.	18 engagement by TVA?
19 Q. And is that for all of your time? I mean is	19 A. No, I did not.
20 it -- you have no different rate for different	20 Q. Did you research whether or not you were
21 functions such as this deposition or preparation for	21 precluded from serving as an expert witness in this

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1 matter based on any federal conflicts, statutes or NRC	1 off.
2 regulations?	2 Q. Well, I'm trying to clarify your answer.
3 A. I don't know what you mean by research.	3 The operative factor for you was whether you
4 Q. Well, did you check into it? Did you	4 personally conducted any decision making regarding
5 examine that question?	5 Bellefonte or Nuclear Development?
6 A. I think I considered that question. I did	6 A. Correct.
7 not undertake extensive research on it.	7 Q. And you answered that question that you did
8 Q. Are you familiar -- you're familiar I guess	8 not participate in any decision making?
9 since you were the ethics officer at one time, you're	9 A. That is correct.
10 familiar with Title 18, Section 207 of the United	10 Q. And that is the factor that led you to
11 States Code? It deals with restrictions on former	11 conclude that you did not have a conflict under any of
12 officers and employees of federal agencies from	12 the statutes. Is that correct?
13 accepting certain assignments, engagements after they	13 A. That's correct.
14 leave an Agency?	14 Q. Now, you agreed earlier that the NRC is an
15 A. No, I cannot recite to you the text of the	15 independent regulatory Agency, correct?
16 statute.	16 A. That's correct.
17 Q. Are you familiar with it, having served in	17 Q. And that TVA is one of the organizations it
18 that capacity --	18 regulates, correct?
19 A. I'm familiar with it but I cannot recite the	19 A. That is correct.
20 text of it.	20 Q. You agree that the -- that Nuclear
21 Q. Can you say one way or the other that that	21 Development filed its application for approval from
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1 statute imposes restrictions on former federal	1 the NRC while you were the Commissioner, correct?
2 employees from accepting certain types of engagements	2 A. That is correct.
3 after leaving federal employment?	3 Q. And you had a personal meeting with
4 A. I would need to look at the statute itself	4 representatives of Nuclear Development at which you
5 before I answer that question.	5 discussed their plan to pursue an application for
6 Q. Did you consider the obligations under that	6 transfer of the construction permits, correct?
7 statute before you accepted this engagement?	7 MR. LEMBKE: Object to the form, lack of
8 A. I considered the obligations, whether I had	8 foundation. That misstates his prior testimony about
9 -- would have had a conflict regarding prior service	9 that meeting.
10 and I did not believe I did.	10 BY MR. O'REAR:
11 Q. Okay. And what are the factors that you	11 Q. You can answer.
12 considered as to whether or not you had a conflict or	12 A. What I said before was they came in, they
13 not?	13 dropped in, they provided general information about
14 A. The factors I would have considered is	14 what their intentions were.
15 whether I had had any decision making with respect to	15 Q. And --
16 Nuclear Development and TVA with respect to this	16 A. That was not a meeting at which either a
17 matter. And I did not.	17 commissioner would have endorsed, would have supported
18 Q. And so an operative question for you is	18 or objected to what they were doing. It's purely
19 whether you had any -- you conducted any decision	19 informational. That's the nature of the drop-in
20 making. Is that correct?	20 meeting.
21 A. Would you repeat that, please? It got cut	21 It's not a decision making meeting and it is

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<p>1 not something in which -- as I said before, in which 2 the Commission itself was taking particular action.</p> <p>3 Q. But is it correct that they did inform you 4 that they intended to pursue an application for 5 transfer of the construction permits?</p> <p>6 MR. LEMBKE: Form, lack of foundation, 7 misstates prior testimony.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. You may answer.</p> <p>10 A. Actually I don't recall the question now.</p> <p>11 Q. The question is: Were you informed at that 12 meeting by representatives of Nuclear Development that 13 they intended to pursue an application with the NRC 14 for consent of the transfer of the construction 15 permits to Nuclear Development?</p> <p>16 MR. LEMBKE: Same objection.</p> <p>17 THE WITNESS: We were -- I was informed at 18 that meeting that they intended to pursue the 19 completion of the Bellefonte project with the hope of 20 turning it into an operating reactor site.</p> <p>21 BY MR. O'REAR:</p>	<p>1 what I have been engaged in here. 2 That would suggest that any federal employee 3 who leaves federal service could never work on 4 anything that it comes within the scope of the 5 regulatory Agency's authority, and that's simply 6 wrong.</p> <p>7 Q. Well, not necessarily.</p> <p>8 Are you saying that a U.S. attorney could 9 leave the U.S. Attorney's Office and defend a party on 10 an investigation he had participated in?</p> <p>11 MR. LEMBKE: Objection.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Are you saying that?</p> <p>14 MR. LEMBKE: Object to the form.</p> <p>15 First I move to strike the statement "not 16 necessarily."</p> <p>17 Second of all, I object on lack of 18 foundation for this question.</p> <p>19 MR. O'REAR: Well, his answer was 20 nonresponsive and I was asking him if it covered -- if 21 it covered the scenario I just mentioned.</p>
<p>1 Q. And would that necessarily have involved 2 receiving transfer of the construction permit?</p> <p>3 A. They would have had --</p> <p>4 MR. LEMBKE: Same objection.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Go and answer, please.</p> <p>7 A. They would have had to get NRC approval, 8 that's correct.</p> <p>9 Q. Did you consider whether or not you had a 10 conflict because the NRC is currently regulating TVA 11 and was regulating while you were there?</p> <p>12 MR. LEMBKE: Objection, vague.</p> <p>13 You can answer, if you understand it.</p> <p>14 THE WITNESS: The question was again, 15 whether -- you have to repeat the question.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. Did you consider whether you had a conflict 18 because the NRC is currently regulating TVA and was 19 regulating TVA when you were there?</p> <p>20 A. That I was -- I probably considered that. I 21 do not believe that it any bar -- poses any bar to</p>	<p>1 MR. LEMBKE: His answer was certainly 2 responsive to the question.</p> <p>3 I don't have any idea what the basis for 4 that is.</p> <p>5 MR. O'REAR: Well, the basis for is that 6 it's a completely overbroad statement. I'm asking him 7 whether or not there would be exceptions to that 8 statement.</p> <p>9 MR. LEMBKE: Same objection.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. All right. Mr. Burns, did you check with 12 the District of Columbia Bar regarding whether or not 13 you had a conflict in accepting this matter?</p> <p>14 A. No, I did not.</p> <p>15 Q. Can you tell us what your total fees have 16 been to date that you charged for your work for TVA?</p> <p>17 A. I've received payment of approximately 18 \$25,000, and then really had not done any work -- and 19 that was in May. And I really haven't done any more 20 work since the last few weeks.</p> <p>21 So, I believe I've sort of logged another 20</p>
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<p style="text-align: right;">Page 97</p> <p>1 to 25 hours. But have not, you know, sent the invoice 2 in as of yet.</p> <p>3 Q. Okay.</p> <p>4 MR. LEMBKE: Caine, can we go off the record 5 a minute to talk about lunch plans?</p> <p>6 MR. O'REAR: Sure. Well, let me finish this 7 line of questions, please.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. So you have received payment of \$25,000, 10 that would be partial payment, correct?</p> <p>11 A. Correct.</p> <p>12 Q. That would have been for 50 hours of work. 13 Is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then you say you've logged in an 16 additional 20 to 25 hours of work?</p> <p>17 A. Correct.</p> <p>18 Q. So if that is billed, then that would be an 19 additional 12,000 or so dollars, correct?</p> <p>20 A. Something like that, yes.</p> <p>21 Q. So your charges to this date have been</p>	<p style="text-align: right;">Page 99</p> <p>1 A. Essentially it's an enforcement action above 2 a notice of violation or for reactors now, in the 3 reactor oversight process, that goes beyond the 4 assessment process within that context.</p> <p>5 So for the most part what that means is 6 civil penalty or orders, as I was discussing before 7 enforcement orders.</p> <p>8 Q. Let's say over the last 20 years, have you 9 been involved in any escalated enforcement actions 10 against TVA?</p> <p>11 A. Well, as a commissioner, no, I don't believe 12 that any of those -- and that would not be common 13 anyway, that the initiation of the action would come 14 to the Commission. So as a commissioner since 2014, 15 no.</p> <p>16 It is possible. I just I don't have a 17 recollection of what actions TVA may have been subject 18 to in, say the last 20 years. You know, again --</p> <p>19 Q. You --</p> <p>20 A. Go ahead.</p> <p>21 MR. LEMBKE: No, no. You should finish.</p>
<p style="text-align: right;">Page 98</p> <p>1 roughly \$37,000?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. All right. We can go off the record.</p> <p>4 (Whereupon, a recess ensued.)</p> <p>5 MR. O'REAR: Back on the record.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Mr. Burns, were you involved personally in 8 any enforcement actions against TVA other than the 9 ones you previously mentioned in the deposition?</p> <p>10 A. I didn't -- what ones in my deposition? I'm 11 sorry. Other than --</p> <p>12 Q. You mentioned some matters that you were 13 involved in the mid '90s regarding enforcement actions 14 against TVA?</p> <p>15 A. Yeah, or the mid 1980s.</p> <p>16 Q. The mid 1980s?</p> <p>17 A. Yeah, I'm not aware of any.</p> <p>18 Q. Is there such a term as "escalated 19 enforcement actions" by the NRC?</p> <p>20 A. Yes, there is.</p> <p>21 Q. What does that mean?</p>	<p style="text-align: right;">Page 100</p> <p>1 Finish your answer.</p> <p>2 THE WITNESS: As I said before, as both 3 deputy general counsel and as general counsel, you 4 have responsibility for the supervision of legal staff 5 who are providing advice, counsel and representation 6 to the NRC technical staff. And it is, you know, it 7 is conceivable that I was briefed on -- on some 8 matters that might have arisen regarding TVA or not. 9 I just don't have any recollection.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. Were you involved in the NRC citation 12 alleging dozens of nuclear safety violations at the 13 Watts Bar nuclear plant by TVA?</p> <p>14 MR. LEMBKE: Object to the form, lack of 15 foundation.</p> <p>16 MR. O'REAR: I'm asking if he was involved.</p> <p>17 MR. LEMBKE: Well, you're assuming there is 18 such a thing.</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. Was there?</p> <p>21 A. I don't know what time frame you're talking</p>

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<p>1 about.</p> <p>2 Q. Well, I'm talking about allegedly in 2015</p> <p>3 regarding pressurized water levels rising</p> <p>4 uncontrollably that the NRC citation assessed against</p> <p>5 TVA alleging dozens of nuclear safety violations.</p> <p>6 Were you involved in that?</p> <p>7 A. No, I was not involved. As a commissioner</p> <p>8 that would have been something undertaken by the</p> <p>9 staff.</p> <p>10 Q. And do you know whether or not that matter</p> <p>11 it still pending before the NRC?</p> <p>12 A. I do not know. I don't know the status of</p> <p>13 it. I mean, typically when you issue a citation and</p> <p>14 given that it was done in 2015, you would have been --</p> <p>15 required corrective action of the licensee and that</p> <p>16 would be carried out. But I'm not aware of the actual</p> <p>17 status of that.</p> <p>18 Q. Were you involved in the NRC citation to TVA</p> <p>19 for violations of whistleblower protection for nuclear</p> <p>20 workers at the Sequoyah and Watts Bar plant?</p> <p>21 A. And when was that?</p>	<p>1 A. And when was this?</p> <p>2 Q. I believe it was in 2018.</p> <p>3 A. I was not involved in it, no.</p> <p>4 Q. Were you aware of it?</p> <p>5 A. I don't have any particular recollection of</p> <p>6 it.</p> <p>7 Q. Okay. And do you know whether it was</p> <p>8 pending when you left the NRC?</p> <p>9 A. I don't know what the status was when I</p> <p>10 left.</p> <p>11 Q. Other than what you've told us so far, can</p> <p>12 you identify any escalated enforcement actions against</p> <p>13 TVA regarding its nuclear plants that you were</p> <p>14 involved in?</p> <p>15 A. Well, my only specific recollection is from</p> <p>16 -- again, from the 1980s when I was in the division</p> <p>17 that was responsible for leading staff on enforcement</p> <p>18 matters, and I believe there was an order issued to</p> <p>19 TVA with respect to having an assessment of what we</p> <p>20 can now call safety culture. Basically, the</p> <p>21 employees -- the environment for employees.</p>
<p>1 Q. 2015 -- '15 to '18.</p> <p>2 A. I have awareness that it occurred but I was</p> <p>3 not involved in that -- undertaking that enforcement</p> <p>4 action.</p> <p>5 Q. Okay. What -- how are you aware of it?</p> <p>6 A. Well, the staff informs the Commission of</p> <p>7 significant actions -- of significant enforcement</p> <p>8 actions it may take.</p> <p>9 Q. Did the staff likewise inform the Commission</p> <p>10 of the safety violations at Watts Bar that we</p> <p>11 previously discussed?</p> <p>12 A. I don't have a particular recollection of</p> <p>13 that.</p> <p>14 Q. Do you know whether the whistleblower</p> <p>15 violation matter is still pending before the NRC?</p> <p>16 A. I don't know what might be pending or not.</p> <p>17 Q. Was it pending when you left the NRC?</p> <p>18 A. I don't have any particular recollection.</p> <p>19 Q. Were you involved in the citation alleging</p> <p>20 violation by TVA corporate management for</p> <p>21 discrimination against a Sequoyah employee?</p>	<p>1 But that's the only one I have a specific</p> <p>2 recollection of.</p> <p>3 Q. Okay. All right. Let's take a lunch break.</p> <p>4 MR. LEMBKE: All right. Why don't we plan</p> <p>5 to be back around 11:50 Central Time, 12:50 Eastern?</p> <p>6 MR. O'REAR: Okay.</p> <p>7 (Whereupon, a recess ensued.)</p> <p>8 (Afternoon session.)</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Mr. Burns, we're coming back from a</p> <p>11 30-minute lunch break.</p> <p>12 Did you review any of the exhibits during</p> <p>13 the break to prepare for your testimony after lunch?</p> <p>14 A. No, I did not look at any of the exhibits.</p> <p>15 Q. Okay. Now, we've identified Exhibit 199</p> <p>16 which was your original report, correct?</p> <p>17 A. Correct.</p> <p>18 Q. You have that before you.</p> <p>19 Later in your stack I've got your supplement</p> <p>20 to the report marked. We'll identify that as 201.</p> <p>21 (Burns Exhibit No. 201 was marked for</p>
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1 identification.)	1 else quite honestly.
2 BY MR. O'REAR:	2 Q. Okay. Well, I'm not sure I understood your
3 Q. But I don't think you need to dig it out	3 answer.
4 right now.	4 You don't recall anything being given to you
5 But let me ask you this about both reports.	5 by TVA counsel other than the lawsuit depositions,
6 Did you write both of those reports?	6 exhibits and pleadings. Is that correct?
7 A. Yes, I did.	7 A. That's correct.
8 Q. Were any part of those reports written by	8 Q. All the other matters that you've listed in
9 someone else?	9 your reports that you considered were obtained by your
10 A. No.	10 own research?
11 Q. Did you have any research assistance on	11 A. Correct.
12 these reports?	12 Q. Did you speak with any TVA personnel other
13 A. No.	13 than Mr. Lembke, Mr. Ayliffe or Mr. Chandler in the
14 Q. You did all the research yourself?	14 process of gathering information for your report?
15 A. Yes, I mean TVA provided some documents, you	15 A. No. The only caveat is early at the initial
16 know, exhibits in this litigation. But I -- otherwise	16 contact with Mr. Chandler, there may have been a
17 the research was mine.	17 document that he provided. But I've had no contact
18 Q. Okay. And did they provide documents that	18 with Mr. Chandler since I decided I would proceed with
19 you requested or did they just say, well, we want you	19 this matter whenever -- was it March 2nd or early
20 to consider these documents that we're provided?	20 March.
21 A. It's a combination of both. They provided	21 Q. Okay. And so your testimony is you had no
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1 some documents related to the litigation and there	1 contact with Mr. Chandler since either February --
2 were some circumstances -- I don't have a particular	2 yeah, February 27th or February 28th when he sent you
3 recollection of which ones -- where I asked for	3 those materials?
4 documents. There might have been a reference to	4 A. No, I had contact with Mr. Chandler that may
5 something and it wasn't immediately available to me.	5 have been March 2nd when we actually had a phone call
6 And otherwise, you know, I researched on my	6 where he introduced me to Mr. Ayliffe. But after
7 own.	7 that, I've had no contact with Mr. Chandler.
8 Q. Other than pleadings and deposition	8 Q. And to reiterate you have had no contact
9 exhibits, did TVA provide you any documents that you	9 with Mr. Shea in the process of preparing your
10 considered and relied on?	10 reports. Is that correct?
11 A. I don't think so, because the -- many of the	11 A. That's correct. I've had no contact with
12 deposition exhibits would, for example, would have	12 Mr. Shea regarding this report.
13 been -- you know, for example, Mr. Repka's report	13 Q. Did you have any communication with Michael
14 documents related to the construction permit -- you	14 Lepre of the Pillsbury firm --
15 know, the construction permits themselves and all.	15 A. No, I did not.
16 So, you know, as I say, even the -- I think the Marble	16 Q. -- in this engagement?
17 Hill decision which is, you know, basically a publicly	17 A. No.
18 available decision of the Nuclear Regulatory	18 Q. Have you had any communication with anyone
19 Commission. You know, again, that -- I think they may	19 connected with the Pillsbury firm concerning their
20 have provided that in the letter to Dr. Asperger from	20 letter that's an exhibit in this case?
21 Acting Director Case. But I don't recall anything	21 A. No, I have not.

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<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. Did you have any communications with 2 anyone at the NRC in the process of preparing your 3 reports?</p> <p>4 A. The only person I would have had contact 5 with was someone in the public document room at the 6 NRC, because I was looking for the attachments to 7 Acting Director Case's letter to Dr. Asperger. And 8 so, I obtained that through the public document 9 services that the NRC provides.</p> <p>10 But I've had no contact with anyone else at 11 the NRC regarding this matter.</p> <p>12 Q. And are those attachments listed in the 13 materials you considered as part of your report?</p> <p>14 A. I believe -- I believe so.</p> <p>15 Q. Will you check and show us where?</p> <p>16 A. In fact it may not be specifically -- Mr. 17 Case's letter to Dr. Asperger is cited there, 18 although -- as the Exhibit D to TVA's brief, but the 19 attachment, Dr. -- Mr. Case's letter lists certain 20 attachments and that's what I sought from the NRC 21 public document room and they are public documents.</p>	<p style="text-align: right;">Page 111</p> <p>1 counsel or anyone at TVA orally that was not reduced 2 to writing or in a document that you considered in 3 preparing your report?</p> <p>4 A. Not that I -- not that I recall. You know, 5 obviously we've had discussions -- I've had 6 discussions with counsel, but I don't consider that 7 responsive to your question.</p> <p>8 Q. Well, even in discussions with counsel, 9 you're required to reveal any data or facts that were 10 provided to you by counsel --</p> <p>11 A. Okay.</p> <p>12 Q. -- to be considered?</p> <p>13 A. And that, I was not provided any data or 14 facts by counsel that are not reflected in the report.</p> <p>15 Q. Okay. All right. Now, you listed five 16 depositions including your supplemental report that 17 you reviewed. You listed the deposition of Larry 18 Blust, Chris Chandler, William McCollum, Dave Repka, 19 and Timothy Matthews. Is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. I couldn't hear you. I'm sorry.</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. Well, did you obtain -- did you obtain the 2 attachment?</p> <p>3 A. Yes, I did.</p> <p>4 Q. But you didn't list them on your matters 5 considered. Is that correct?</p> <p>6 A. Yes, I did not provide a specific list of 7 attachments. Arguably the letter from Mr. Case to Dr. 8 Asperger identifies attachments with it. So I mean, 9 that's part of it.</p> <p>10 Q. But the Exhibit D that you looked at which 11 was letter filed in court would not have attachments, 12 did it?</p> <p>13 A. I'm not absolutely sure of that but I think 14 the answer is it did not and that's why I sought the 15 public documents from the NRC public document room.</p> <p>16 Q. Were all of the documents and materials that 17 you considered in your reports listed either in 18 Exhibit A to the original report or Exhibit A to the 19 supplemental report?</p> <p>20 A. Yes. To the best of my knowledge, yes.</p> <p>21 Q. Did you receive any information from TVA</p>	<p style="text-align: right;">Page 112</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. You've not reviewed any other 3 depositions in this case. Is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. How did you determine to review only those 6 depositions?</p> <p>7 A. Well, the most significantly I reviewed 8 David Repka's deposition because it was reflective of 9 his views with respect to the reports he filed. So 10 that was most significant.</p> <p>11 I think I reviewed the other -- well, and 12 also with respect to Tim Matthews and the views that 13 Tim Matthews was espousing during his deposition that 14 are addressed in the supplemental report.</p> <p>15 With respect to Chris Chandler, Larry Blust, 16 Mr. McCollum, I reviewed I think just for general 17 background. But they did not figure significantly in 18 the report.</p> <p>19 Q. They're not cited in your report at all 20 except in your list of materials reviewed. Is that 21 correct?</p>

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<p>1 A. I believe that's correct.</p> <p>2 Q. Is it a fair statement to say that there's</p> <p>3 nothing in your report that relies on the deposition</p> <p>4 testimony of Chris Chandler?</p> <p>5 A. Well, I didn't -- I did not make specific</p> <p>6 reference to it. I agree with that. Again, what I</p> <p>7 did writing the report is to provide citations to</p> <p>8 either significant decisions or what I thought were</p> <p>9 significant exhibits or other documents that bore most</p> <p>10 directly on the report.</p> <p>11 But, you know, I would not dismiss any of</p> <p>12 the other things that might have been listed but not</p> <p>13 called out in a specific reference because they did,</p> <p>14 you know, provide some of the milieu or the background</p> <p>15 for what I was looking at in drafting and creating the</p> <p>16 report.</p> <p>17 Q. Was there anything in Chris Chandler's</p> <p>18 deposition in his testimony that you relied on in</p> <p>19 forming your opinions?</p> <p>20 A. I don't think there is anything particular</p> <p>21 in his deposition. Again, you know, it helps me</p>	<p>1 Q. Okay. Is that because you saw the</p> <p>2 deposition exhibits when you read the depositions? Is</p> <p>3 that what you're saying?</p> <p>4 A. I may have -- well, some -- I may have -- I</p> <p>5 think I was provided some exhibits by TVA. And then</p> <p>6 when I was reading the depositions, there may have</p> <p>7 been exhibits that were identified in the course of</p> <p>8 the deposition that I wasn't sure what that was and</p> <p>9 wanted to take a look at.</p> <p>10 I think that's just the process of, you</p> <p>11 know, putting it together.</p> <p>12 Q. Okay. So if there were other exhibits,</p> <p>13 deposition exhibits in the case and you did not review</p> <p>14 those depositions and you did not receive those other</p> <p>15 exhibits from TVA counsel, you wouldn't know anything</p> <p>16 about whether they existed or not existed, would you?</p> <p>17 A. Can you repeat the question? I'm not sure I</p> <p>18 understand it.</p> <p>19 Q. All right. You said you reviewed certain</p> <p>20 depositions and you were provided exhibits by TVA</p> <p>21 counsel, and then you had some questions about</p>
<p>1 provide, as did the others, provide me context for the</p> <p>2 circumstances.</p> <p>3 Q. Now, you reviewed the deposition exhibits</p> <p>4 that are listed in your Exhibit A, correct?</p> <p>5 A. Correct.</p> <p>6 Q. How did you determine to review and consider</p> <p>7 only those exhibits and not other deposition exhibits</p> <p>8 either from the depositions you reviewed or from the</p> <p>9 depositions you did not review?</p> <p>10 A. I think in looking from my standpoint, going</p> <p>11 back and thinking about it in terms of drafting the</p> <p>12 report, these were things that sort of came to the</p> <p>13 four, because they are things like construction</p> <p>14 permits. There is some litigation documents between</p> <p>15 ND and TVA.</p> <p>16 It has other, you know, other documentation</p> <p>17 with respect to the handling of prior transfers and</p> <p>18 things like that.</p> <p>19 So what I was doing is I think from my</p> <p>20 standpoint, these had the most influence in terms of</p> <p>21 coming up with the opinions provided in the report.</p>	<p>1 exhibits that were not provided in the depositions you</p> <p>2 read and you asked for those exhibits as well. Is</p> <p>3 that correct?</p> <p>4 A. Yes, that's correct.</p> <p>5 Q. All right. But if you didn't review certain</p> <p>6 depositions and those deposition exhibits were not</p> <p>7 provided by TVA counsel, you wouldn't know whether</p> <p>8 they existed or not, would you?</p> <p>9 A. I think that's speculative. It --</p> <p>10 Q. Well, you wouldn't --</p> <p>11 A. Probably not. Probably not, but --</p> <p>12 Q. My point is you didn't read all the</p> <p>13 depositions or review all the deposition exhibits in</p> <p>14 this case, did you?</p> <p>15 A. I have not read every document that has been</p> <p>16 filed or has been exchanged between the parties in</p> <p>17 this litigation.</p> <p>18 Q. You've certainly not read every document</p> <p>19 that's been produced by the parties in this case, have</p> <p>20 you?</p> <p>21 A. I think that's what I just answered to that.</p>

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<p>1 I have not read every document that's been exchanged</p> <p>2 or prepared by both parties in this case.</p> <p>3 Q. Well, would you concede there are facts in</p> <p>4 this case which you're not aware of?</p> <p>5 MR. LEMBKE: Objection, lack of foundation,</p> <p>6 calls for speculation.</p> <p>7 You can answer if you can, Mr. Burns.</p> <p>8 THE WITNESS: I have no reason -- I have no</p> <p>9 basis on which to answer that question.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. You think you may have -- you may have</p> <p>12 reviewed every fact that's been presented in this</p> <p>13 case?</p> <p>14 A. Well, again, I say, what do you mean by fact</p> <p>15 here? I believe I have reviewed the relevant facts</p> <p>16 related to the opinion I have provided. Whether there</p> <p>17 are other facts related --</p> <p>18 Q. Well, there --</p> <p>19 A. Whether there are other facts relating to</p> <p>20 the litigation between the two parties, I would</p> <p>21 concede there undoubtedly are. But I'm not sure that</p>	<p>1 Q. Did you review the contract in question,</p> <p>2 which is in your stack there, it's Exhibit A -- excuse</p> <p>3 me, Exhibit 1?</p> <p>4 It's also marked Exhibit A to the complaint.</p> <p>5 A. Yes, I have. I have looked at the contract.</p> <p>6 Q. Did you see and consider Section 7(a) of the</p> <p>7 contract? If you'll look at that on Page 8.</p> <p>8 A. Yes, I believe -- yeah, I'm aware of the</p> <p>9 provision.</p> <p>10 Q. You're aware of the provision seven -- A7?</p> <p>11 A. Yes, I've seen that. Yes, I've seen that.</p> <p>12 I've seen it referenced in some of the litigation</p> <p>13 documents.</p> <p>14 Q. Okay. So you were aware when you prepared</p> <p>15 your report that the TVA representative and warranted</p> <p>16 in the contract that no NRC authorization consent or</p> <p>17 approval was necessary to sell the site to Nuclear</p> <p>18 Development?</p> <p>19 MR. LEMBKE: Objection to the form,</p> <p>20 misstates the evidence.</p> <p>21 BY MR. O'REAR:</p>
<p style="text-align: center;">Page 118</p> <p>1 I have missed some significant matter or factual</p> <p>2 matter.</p> <p>3 Q. When I refer to facts, I'm referring to</p> <p>4 testimony or documentary evidence.</p> <p>5 A. So -- and again, the question is?</p> <p>6 Q. Well, I'm going to ask you another question.</p> <p>7 I believe you stated that you have reviewed</p> <p>8 all relevant facts that pertain to your opinion?</p> <p>9 A. That's correct.</p> <p>10 Q. Even though there may be facts out there</p> <p>11 you're unaware of at this moment, right?</p> <p>12 MR. LEMBKE: Objection, argumentative.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. Right?</p> <p>15 MR. LEMBKE: Same objection.</p> <p>16 BY MR. O'REAR:</p> <p>17 Q. You can answer.</p> <p>18 A. I believe I have reviewed the facts that are</p> <p>19 relevant to the opinion. If there are other facts, I</p> <p>20 am not aware of any significant fact that would change</p> <p>21 that opinion. And no basis to believe that there are.</p>	<p style="text-align: center;">Page 120</p> <p>1 Q. Is that correct?</p> <p>2 MR. LEMBKE: Same objection.</p> <p>3 THE WITNESS: Well, I'm aware of that</p> <p>4 provision, yes.</p> <p>5 BY MR. O'REAR:</p> <p>6 Q. Okay. You're aware of the provision that</p> <p>7 says no authorization consent or approval or other</p> <p>8 order or action or filing with any governmental</p> <p>9 authority is required for the execution and delivery</p> <p>10 by the TVA of this agreement for the consummation by</p> <p>11 the TVA of this -- of the transactions contemplated</p> <p>12 hereby? You're aware of that and were when you formed</p> <p>13 your opinions. Is that right?</p> <p>14 A. I may have lost myself.</p> <p>15 Where is the provision, again?</p> <p>16 Q. It's on Page 8 of Exhibit 1, Section 7(a)7?</p> <p>17 A. Okay. And your question is?</p> <p>18 Q. Well, I just want to make sure you know and</p> <p>19 we're talking about the same provision.</p> <p>20 I read the second part of subsection seven.</p> <p>21 A. Yes, I've seen the provision and I'm aware</p>

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1 of that provision.	1 Section 1(e) by closing, TVA's obligations under this
2 Q. And did that provision -- was that provision	2 Section 1(e) shall cease." Do you see that?
3 a factor one way or the other that you considered in	3 A. Yes, I do.
4 forming your opinion?	4 Q. Did that section of the contract factor in
5 MR. LEMBKE: Objection, vague.	5 to your opinion?
6 BY MR. O'REAR:	6 A. No, because, again, this is a contract
7 Q. You may answer.	7 between Nuclear Development and TVA and my opinion it
8 MR. LEMBKE: Same objection.	8 reflects my judgement with respect to NRC's historic
9 THE WITNESS: The answer -- my answer is	9 regulatory regime and regulatory authority.
10 that provision -- that's a provision in this contract.	10 Q. Were you aware --
11 That does not go to my judgement with respect to the	11 A. This could not --
12 application of the Nuclear Regulatory Commission's	12 Q. Okay. Were you aware of the fact that
13 regulatory framework.	13 Nuclear Development paid TVA \$22.2 million when the
14 BY MR. O'REAR:	14 contract was signed?
15 Q. Okay. So are you saying that that provision	15 A. I have no specific awareness of that.
16 did not factor into your opinion?	16 Q. Were you aware that Nuclear Development paid
17 MR. LEMBKE: Objection, asked and answered.	17 TVA an additional \$8 million in maintenance costs and
18 BY MR. O'REAR:	18 fees between the date the contract was signed and the
19 Q. Are you saying that that section did not	19 date of the scheduled closing?
20 factor into your opinion?	20 A. I don't have any particular awareness of
21 MR. LEMBKE: Same objection.	21 that.
Page 122	Page 124
1 THE WITNESS: That --	1 Q. So those facts did not play a part in your
2 BY MR. O'REAR:	2 opinion. Is that correct?
3 Q. Pardon me?	3 A. That's correct.
4 A. That provision does not reflect on the NRC's	4 Q. And you did not review the deposition of TVA
5 regulatory framework or authority.	5 CEO Bill Johnson. Is that correct?
6 Q. Okay. If you would turn to Page 3 of the	6 A. That's correct, I did not read that one.
7 contract.	7 Q. Were you aware of the fact that Mr. Johnson
8 A. (Witness complies.)	8 made the decision not to close the sale to Nuclear
9 Q. And if you would look at Section 1(e) of the	9 Development?
10 contract in the middle of the page?	10 A. I'm not sure in what context. Probably I
11 A. Yes, I see it.	11 had learned that in terms of the context of my review
12 Q. And did you review that section in the	12 with respect to matters involved in this case, but I
13 process of preparing your report?	13 didn't have any other, you know, personal knowledge.
14 A. Let me read it again.	14 Q. Regardless of how you learned it, were you
15 Yes, I was aware of this provision. I read	15 aware of it when you prepared your report and formed
16 this part of the contract.	16 your opinions?
17 Q. Okay. Were you specifically aware of the	17 A. Well, I was aware that -- where TVA was on
18 last sentence of subsection E which states, "Further	18 the matter, yes, when I wrote my opinion.
19 if an applicable governmental authority has not	19 Q. Were you aware that Mr. Johnson, the CEO,
20 accepted or otherwise allowed the transfer of a	20 personally made the decision not to close the sale to
21 permit, license or authorization pursuant to this	21 Nuclear Development?

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1 A. I really can't say. 2 Q. Did you review a video of Mr. Johnson at a 3 TVA-wide meeting just four days before the closing 4 day? 5 A. No, I did not. 6 Q. Would Mr. Johnson's motivation for making 7 the decision not to close have mattered to you one way 8 or the other in forming your opinion? 9 A. No. 10 Q. If you'd look at Exhibit 31, if you can find 11 it there. 12 A. Yes, I think I've got it. Yes, I have it. 13 Q. This exhibit on the first paper is an e-mail 14 from Sherry Quirk, general counsel of TVA to Larry 15 Blust, counsel for Nuclear Development dated November 16 29, 2018? 17 A. Correct. 18 Q. Have you ever seen -- and it attaches a 19 letter from Ms. Quirk -- have you seen that exhibit 20 before? 21 A. I believe I have.	Page 125 1 interested in this letter were really the first page, 2 I think. Well, so many other things. But I looked at 3 it, yes, I looked at it during the review and I 4 considered it. But more directly it was the Pillsbury 5 letter that I considered more deeply. 6 Q. Did you know that this letter from Ms. Quirk 7 was not delivered to Nuclear Development until 8 9:00 p.m. the night before the closing date? 9 A. Well, I see a 9:00 p.m. date on the e-mail. 10 I had no particular knowledge of that. 11 Q. Okay. But you said you looked at or relied 12 on portions of the first page. If you would look at 13 the first page of her letter -- 14 A. Yes. 15 Q. Do you see that -- 16 MR. LEMBKE: I object to the form of that 17 question because it misstates his testimony. 18 MR. O'REAR: Okay. 19 BY MR. O'REAR: 20 Q. Do you see at the end of the first paragraph 21 the reference of acquiring a production facility,
1 Q. Okay. Sir, and you did not reference this 2 exhibit in your Exhibit A, did you? 3 A. I'd have to review Exhibit A. 4 MR. LEMBKE: Mr. O'Rear, I'd like to direct 5 you to Number 28 on Exhibit A. 6 MR. O'REAR: Which number? 7 MR. LEMBKE: Twenty-eight. 8 THE WITNESS: It's Number 28 but it's got a 9 different -- a deposition exhibit number. 10 MR. O'REAR: Okay. 11 BY MR. O'REAR: 12 Q. Did you rely on this letter for any purpose 13 in forming your opinion? 14 A. Let me look at it for a moment. 15 Well, the letter references an opinion by 16 outside counsel, which I presume is Pillsbury, the 17 Pillsbury firm which provided opinion to TVA. And to 18 the extent, really the only -- to the extent I did 19 reference and consider the Pillsbury letter, I guess 20 the answer would be indirectly yes. 21 Although the only things I would have been	Page 126 1 correct? 2 A. Yes, I do. 3 Q. Is it your opinion that the Bellefonte site 4 is a production facility? 5 A. It has a production facility on it that is 6 under construction. 7 Q. What is the production facility? 8 A. It's a production facility as defined in 9 Section 101 of the Atomic Energy Act and the 10 implementing regulations. And basically it's one 11 that's capable -- I can't quote it from memory -- 12 capable of producing a nuclear reaction -- one 13 designed or used for production or for creating a 14 nuclear reaction. 15 Q. I think you're referring to a utilization 16 facility definition, aren't you? 17 A. Yes, I am. 18 Q. I'm asking you do you agree that this is a 19 production facility? 20 Production facility is different from a 21 utilization facility, isn't it?

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<p style="text-align: right;">Page 129</p> <p>1 A. That's correct. This is a utilization 2 facility.</p> <p>3 Q. So you do not agree with her reference to 4 this site as a production facility. Is that correct?</p> <p>5 A. Well, I think it should have used the term 6 "utilization." The basic principle is the same under 7 Section 101 for both, but I see utilization 8 differently.</p> <p>9 Q. You mentioned the Pillsbury letter. Were 10 you aware that the Pillsbury letter was not produced 11 by TVA to Nuclear Development until well after the 12 lawsuit was filed?</p> <p>13 A. I have no knowledge of when it was provided.</p> <p>14 Q. Does the fact that it -- if it is a fact 15 that the letter was not produced prior to the lawsuit 16 being filed or prior to the closing play any factor in 17 your opinion?</p> <p>18 A. No, it doesn't. Because the opinion goes to 19 the nature, it doesn't go to what the motivations of 20 parties were or their interactions. It goes to the 21 legal question with respect to the status of the</p>	<p>1 Q. Well, you know it's true, don't you?</p> <p>2 A. Well, you're ask- -- I'm not going to 3 speculate as to whether they could, they should or 4 would.</p> <p>5 Q. I'm not asking you if they should. I'm 6 asking you if they could have done that, couldn't 7 they?</p> <p>8 A. As could Nuclear Development.</p> <p>9 Q. Okay. And the NRC has a process for 10 handling such requests. Is that correct?</p> <p>11 A. Yes, I would say it overstates it to say 12 that there's a process or formality but there could 13 have been -- I imagine there could have been some 14 consultation.</p> <p>15 Q. Are you aware that TVA ceased all 16 construction at this site in 1988?</p> <p>17 A. Yes, I'm generally aware of that. What I 18 perhaps am not as clear on is to what extent -- well, 19 you know, I understand they would have maintained it. 20 And then when -- after they re-acquired the 21 construction permit in 2009. Again, if we're going</p>
<p style="text-align: right;">Page 130</p> <p>1 Bellefonte site and the ability of it to be -- and 2 what context it can be transferred at all.</p> <p>3 So that's -- that's what I was looking at.</p> <p>4 Q. Are you aware of the fact that TVA never 5 sought a threshold determination from the NRC before 6 refusing to close the sale to Nuclear Development?</p> <p>7 A. I think I'm generally aware of that and my 8 understanding is neither did Nuclear Development.</p> <p>9 Q. Well, Nuclear Development didn't contend 10 that there was any issue, did they?</p> <p>11 A. I really don't know until -- well, actually, 12 I'm not sure. Because even reading Mr. Repka's 13 opinion and Mr. Matthew's opinion, you know, this is 14 -- there's a bit of wishful thinking about going 15 forward without the prior approval of the CP transfer.</p> <p>16 I can't really -- I can't speculate as to 17 that. All I know is my understanding is neither did.</p> <p>18 Q. If TVA had a question about the legality of 19 the closing, it could have requested a threshold 20 determination from the NRC. Is that correct?</p> <p>21 A. I suppose that's true.</p>	<p style="text-align: right;">Page 132</p> <p>1 through the maintenance preservation option, they 2 would have done some things.</p> <p>3 But in terms of construct -- I do understand 4 that there has been no construction towards actual 5 completion, I think since about that time.</p> <p>6 Q. All right. And do you understand that unit 7 One has been estimated by TVA itself to be only 8 55 percent complete?</p> <p>9 MR. LEMBKE: Object to the form. When?</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. In 2010 or prior?</p> <p>12 A. I'm not aware specifically of what the 13 completion percentages were. I understand they were 14 -- they were fairly far along but there was still a 15 lot of work that needed to be done.</p> <p>16 Q. Well, you don't -- were you made aware that 17 TVA estimated that unit two of Bellefonte was only 18 35 percent complete?</p> <p>19 A. Again, I don't know the -- I don't have a 20 recollection of particular percentages. I know that 21 there were -- you know, some substantial construction</p>

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1 had been done but I don't have an idea of what they 2 were. 3 One thing I will add, for example, is the 4 NRC used to use Bellefonte as a training bit -- or 5 visiting for new employees because they were done far 6 enough that you get an idea of what a nuclear reactor 7 on a nuclear site was. So they were gone -- they more 8 than the groundbreaking, but I -- you know, I 9 understand that there was substantial work that would 10 need to be done to complete them. 11 Q. You have Exhibit 127 before you? That's 12 color photographs on the cover. 13 MR. LEMBKE: It's very small plus the 14 exhibit Number? 15 THE WITNESS: Mine is black and white. 16 BY MR. O'REAR: 17 Q. The caption of the document's Bellefonte 18 Nuclear Plant Unit One and Common Completion of the 19 Project. 20 A. Correct. Yeah, I have that. 21 Q. Okay. Have you ever seen that document	1 A. No. 2 Q. Okay. And then the last sentence was, "The 3 Bellefonte site contained a second identical unit that 4 was completed to approximately 58 percent in 1988 and 5 is currently estimated to be 35 percent complete for 6 the same reasons listed above." Do you see that? 7 MR. LEMBKE: Object to the form, lack of 8 foundation. 9 BY MR. O'REAR: 10 Q. Do you see that? 11 A. I see that. 12 MR. LEMBKE: Same objection. 13 BY MR. O'REAR: 14 Q. Do you have any information that would 15 refute that? 16 A. No, I don't. 17 Q. Okay. 18 Would it have mattered to you in forming 19 your opinions to know that Unit One was only 55 20 percent complete and Unit Two 35 percent complete? 21 A. No, it would not.
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1 before? 2 A. I'm not specifically aware of it, no. I 3 don't think I've actually particularly read it before. 4 Q. Let me ask you then about something in it. 5 Do you see on Page 1, if you would turn 6 there? 7 A. Yes. 8 Q. And if you would look at the bottom of the 9 page, the last bullet point says, "Unit One was 10 90 percent physically complete in 1988 and investment 11 recovery effort from 2005 to 2007 removed material and 12 equipment due to this effort additional scope during 13 DSEP and planned equipment refurbishment, completion 14 -- current completion estimate is 55 percent." Do you 15 see that? 16 A. Yes. 17 MR. LEMBKE: I object to the form, lack 18 foundation. 19 BY MR. O'REAR: 20 Q. Do you have any facts that you're aware of 21 that would refute that?	1 Q. So that would not have been a factor in 2 forming your opinion that Bellefonte is a utilization 3 facility? 4 MR. LEMBKE: Objection, asked and answered. 5 MR. O'REAR: I haven't asked that question. 6 THE WITNESS: Well, I did answer it before 7 and the answer is it does not affect my opinion. 8 BY MR. O'REAR: 9 Q. Were you aware that the steam generators in 10 Units One and two at Bellefonte have had two-foot by 11 two-foot holes cut in them and rendered them 12 inoperable and permanently disabled? 13 A. I don't have a particular knowledge of that. 14 Q. If you knew that, would that have been a 15 factor in forming your opinion about whether 16 Bellefonte is a utilization facility? 17 A. Not under the current circumstances, no. 18 Q. Were you aware that the Bellefonte plant was 19 never put in operation? 20 A. Yes, I'm aware of that. 21 Q. And it had never had an operating licensing

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<p>1 from NRC. Are you aware of that?</p> <p>2 A. Yes, I'm aware it has never had an operating</p> <p>3 license.</p> <p>4 Q. Were any of those factors important in</p> <p>5 forming your opinion that Bellefonte is a utilization</p> <p>6 facility?</p> <p>7 A. The first one was what, again?</p> <p>8 Q. That it was never put into operation.</p> <p>9 A. Okay. So no, it does not. It is not</p> <p>10 dispositive with respect to my opinion because</p> <p>11 operation requires a different license for following</p> <p>12 through. And the process that Bellefonte used which</p> <p>13 is the historic two-step licensing process, and they</p> <p>14 would have needed to go into operation to get an</p> <p>15 operating license.</p> <p>16 From my standpoint that does not obviate the</p> <p>17 control that the NRC historically has placed over a</p> <p>18 site that is under construction, even if it is in</p> <p>19 involved construction, and that is where my opinion</p> <p>20 focussed.</p> <p>21 So those factors with respect to lack of</p>	<p>1 Q. I believe he's described as plant manager</p> <p>2 currently. Were you aware of that?</p> <p>3 MR. LEMBKE: Object to the form, lack of</p> <p>4 foundation.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Did you know that Mr. Chardos was the head</p> <p>8 of the transition team regarding the transfer of the</p> <p>9 Bellefonte site from TVA to Nuclear Development?</p> <p>10 A. I think I've seen that reference, again, in</p> <p>11 depositions or some other documents.</p> <p>12 Q. All right. And let me direct your attention</p> <p>13 to Page 50 of this deposition, if you would.</p> <p>14 I'm referring to the transcript page. There</p> <p>15 are four pages on one page.</p> <p>16 A. I read the transcript.</p> <p>17 Q. I'm not referring to the bottom right hand</p> <p>18 corner page.</p> <p>19 A. Right. I understand. I have the page of</p> <p>20 the transcript.</p> <p>21 Q. All right. Let me read a question and</p>
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<p>1 operation are not dispositive to my opinion.</p> <p>2 Q. All right. I'd like for you to look at the</p> <p>3 next exhibit which is Exhibit 202 which will be the</p> <p>4 deposition of James Chardos. You should have that</p> <p>5 transcript there.</p> <p>6 MR. O'REAR: And that is Exhibit 202, if you</p> <p>7 could mark it as 202, please.</p> <p>8 (Burns Exhibit No. 202 was marked for</p> <p>9 identification.)</p> <p>10 THE WITNESS: I have it.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Now, you did not list Mr. Chardos'</p> <p>13 deposition on your report, did you?</p> <p>14 A. No, I did not.</p> <p>15 Q. Do you know who James Chardos is?</p> <p>16 A. I'm not -- I believe -- well, he works for</p> <p>17 the Tennessee Valley Authority. From references in</p> <p>18 other depositions, I would characterize him as a sort</p> <p>19 of a project manager or contact, but I don't -- I</p> <p>20 really don't know much about his role other than what</p> <p>21 I've read in depositions or other documents.</p>	<p>1 answer to you.</p> <p>2 At the bottom of Page 50 the question is,</p> <p>3 "Would you agree that the Bellefonte plant could not</p> <p>4 been under construction since 1988?"</p> <p>5 Answer, "Yes."</p> <p>6 Now, you were unaware of that testimony when</p> <p>7 you prepared your report. Is that correct?</p> <p>8 MR. LEMBKE: I object to the form, lack of</p> <p>9 foundation.</p> <p>10 MR. O'REAR: That he was unaware of it?</p> <p>11 MR. LEMBKE: No. You're reading statements</p> <p>12 that he's -- had given no indication he's ever seen</p> <p>13 before.</p> <p>14 MR. O'REAR: That's what I'm asking him.</p> <p>15 BY MR. O'REAR:</p> <p>16 Q. You were unaware of that testimony from the</p> <p>17 plant manager at Bellefonte when you prepared your</p> <p>18 report. Is that correct?</p> <p>19 MR. LEMBKE: I object to the form.</p> <p>20 Mr. Chardos did not testify that he was the</p> <p>21 plant manager. He identified a separate title in his</p>

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<p style="text-align: right;">Page 141</p> <p>1 deposition. And I also object to the form on the 2 basis of lack of foundation and asked and answered. 3 He's already said he hasn't read this deposition. 4 BY MR. O'REAR: 5 Q. Okay. If you -- Mr. Burns, if you knew that 6 Mr. Chardos had testified to that in his deposition, 7 would that have made a difference in your opinion 8 expressed in your report? 9 MR. LEMBKE: Let me object to the form of 10 the question given that Mr. Chardos' deposition was 11 taken on July 10th and the report was issued in -- 12 prior to that. 13 But, go ahead. 14 THE WITNESS: So again, the question is? 15 BY MR. O'REAR: 16 Q. If you were aware of that fact as testified 17 by Mr. Chardos, would that have made a difference in 18 your opinion in your report? 19 A. No, it would not have. Because as I think 20 I've stated several minutes ago, I'm aware that the 21 Bellefonte -- work on the Bellefonte plant in terms of</p>	<p style="text-align: right;">Page 143</p> <p>1 THE REPORTER: Yes, we're back on the 2 record. 3 BY MR. O'REAR: 4 Q. All right. Mr. Burns, if you would look at 5 transcript Page 56 of the Chardos deposition. 6 A. I got it. 7 Q. I'll read to you the two questions and two 8 answers at the end of that page. 9 It says question -- it says 2110, I think 10 it's supposed to be 2010, "When this report was 11 prepared." And it's referring to the report you just 12 looked at, which is Exhibit 127 previously. 13 It states, "Is it correct to say that the 14 design was not finished for Bellefonte or that it was 15 contemplated to be changed?" 16 Answer, "The design was not complete in 17 2010." 18 Question, "Okay. And what was not complete 19 about the design in 2010?" 20 The answer was the control room. "The main 21 control room was not a complete design." Do you see</p>
<p style="text-align: right;">Page 142</p> <p>1 active construction has been suspended for some time. 2 You know, it's now three decades, I guess. And, you 3 know, my understanding even with my encounter when I 4 was in the General Counsel's Office in the early 2000s 5 was that there wasn't construction going on at that 6 time. 7 MR. LEMBKE: I can't hear what the witness 8 is saying. 9 MR. O'REAR: I can -- let's go off the 10 record for a minute. 11 (Whereupon, a recess ensued.) 12 MR. O'REAR: Still with us, Mr. Burns? 13 THE WITNESS: I am. 14 MR. O'REAR: Can you say something again 15 because your voice is muted? 16 THE WITNESS: I'm here. 17 MR. O'REAR: All right. I hear you now. 18 MR. LEMBKE: All right. I'm back. 19 MR. O'REAR: Okay. Everybody on? 20 Back on the record. 21 Ken, are we back on the record?</p>	<p style="text-align: right;">Page 144</p> <p>1 that? 2 MR. LEMBKE: Object to the form, lack of 3 foundation. 4 THE WITNESS: Yes. 5 BY MR. O'REAR: 6 Q. If you known those facts when you prepared 7 your report, would that have made a difference in your 8 opinion? 9 A. No, it would not have. 10 Q. Okay. If you would turn to Page 68 of the 11 transcript. 12 A. Okay. I'm there. 13 Q. And towards the top of that page the 14 question was, "And is it a true statement today that 15 the Bellefonte plant site is not in condition to 16 enable it to meet performance and design 17 requirements?" 18 Answer, "Yes." 19 If you had known those facts when you 20 prepared your report and formed your opinion, would 21 that have made a difference?</p>

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1 A. No, it would not.	1 Q. Mr. Burns, if you would next direct your
2 MR. LEMBKE: Same objection.	2 attention to Exhibit 85.
3 BY MR. O'REAR:	3 A. Eighty-five.
4 Q. Okay. If you would turn to Page 72	4 Q. So you have that?
5 continuing onto Page 73 and 74, let me read you these	5 A. Yes, I do.
6 questions and answers starting at Line 18 on Page 72.	6 Q. Have you seen this letter before?
7 "Is it correct, Mr. Chardos, that Units One	7 A. Let me take a look at it. Yes, I have seen
8 and two of Bellefonte cannot be used to sustain	8 it.
9 nuclear fission in a self-supporting chain reaction?"	9 Q. Do you recognize it to be a letter from the
10 Answer, "In the current condition."	10 senior project manager regarding the -- at NRC
11 Question, "That's a correct statement?"	11 regarding the Bellefonte application to transfer a
12 Answer, "Yes."	12 construction permit?
13 Question, "Is it a correct statement to say	13 A. Yes, but I don't recall whether this was
14 that in their current condition Units One and two of	14 where they finally accept the application or not.
15 Bellefonte cannot function as nuclear reactors?"	15 Q. Well, I'll show you. And it's a letter
16 There was an objection. He asked for	16 dated November 25th, 2019 to Nuclear Development,
17 restatement of the question.	17 correct?
18 I restated, "Is it correct that Units One	18 A. Correct.
19 and two of Bellefonte cannot function as nuclear	19 Q. Now, if you would, direct your attention to
20 reactors in their current condition?" There was an	20 the third paragraph of the letter.
21 objection.	21 You may read that.
Page 146	Page 148
1 Answer, "They cannot function."	1 A. Yes, I've read it.
2 Question, "Cannot function as nuclear	2 Q. Is this the letter where the NRC accepted
3 reactors?"	3 the application for review?
4 Answer, "Yes."	4 A. Yes, that's what it appears to be.
5 Question, "Is it a correct statement to say	5 Q. Okay. Does this letter play any part in the
6 that in their current condition Units One and two are	6 formation of your opinion?
7 incapable of utilizing special nuclear materials?"	7 A. Well, it --
8 Answer, "In their current condition they	8 Q. Let me ask this question and -- strike that
9 cannot utilize special nuclear material."	9 former question.
10 Then later on that page: Question, "Was	10 Does the NRC's acceptance or view of Nuclear
11 there ever any loading of special nuclear material	11 Development's application have any effect on your
12 into the reactors at Bellefonte?"	12 opinion?
13 Answer, "No."	13 A. You're asking whether the acceptance of the
14 If you had known any of those facts that I	14 application had any effect?
15 just read when you prepared your report and formed	15 Q. Yes.
16 your opinion, would that have made a difference.	16 A. My opinion? Well, the answer is no.
17 MR. LEMBKE: I'll object to the form, calls	17 Because -- again, based on my experience at the NRC
18 for -- speculation -- or lack of foundation and	18 and understanding the regulations or the requirements,
19 compound question.	19 this is what I'd expect from the NRC in terms of an
20 THE WITNESS: No.	20 application review. And what this deals with is a
21 BY MR. O'REAR:	21 request for an order, an authorization to transfer.

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Page 149 1 So it works within the framework that I've suggested. 2 Q. Let me direct you to the next exhibit, which 3 is Exhibit 122. It's captioned: Expert Report and it 4 is the report of Dave Repka, Nuclear Development's 5 expert. 6 A. Right. 7 (Burns Exhibit No. 122 was marked for 8 identification.) 9 BY MR. O'REAR: 10 Q. Do you have that? 11 A. I have it. 12 Q. And you addressed this report in your 13 report, correct? 14 A. That's correct. 15 Q. Do you know David Repka? 16 A. Yes, I do. 17 Q. Okay. Do you know that he practiced law in 18 the field of nuclear regulation, compliance and 19 licensing for over 38 years? 20 A. Yes, I know he's basically a nuclear lawyer. 21 Q. And do you know that he regularly practiced	Page 151 1 attorney. He's been in the field. He's licensed to 2 practice. Hasn't lost his license, so -- 3 Q. Does he have a reputation as a highly 4 skilled and experienced nuclear licensing attorney? 5 A. I can't speak to his reputation. 6 Q. You don't know his reputation? 7 A. I don't know how he is assessed. You're 8 quick to characterize him as a highly respected, 9 highly competent lawyer. He is a lawyer. He's 10 practiced in his field. I believe he's a competent 11 lawyer but as to accolades, I'm not prepared to go 12 there. 13 Q. How many nuclear licensing attorneys do you 14 know that practice privately outside the NRC? 15 A. Today? 16 Q. Yes. 17 A. I didn't hear. 18 Q. How many nuclear licensing attorneys do you 19 know? 20 MR. LEMBKE: I'm going to object on the 21 vague of -- basis of "know."
Page 150 1 before the NRC? 2 A. Yes, I'm aware of that. 3 Q. Do you know that he formerly worked at the 4 NRC? 5 A. Yes, he was a junior -- he was junior to me 6 as a lawyer, about three years after I began to work 7 for a short period of time. 8 Q. Did you work with him on any matters? 9 A. It's possible. I think he was primarily 10 involved in the licensing -- licensing end. I was 11 involved in oversight and enforcement but also had 12 interactions as I say on citizen petitions that might 13 interact with licensing matters. 14 So I never participated in a case with him, 15 but I probably had some interactions with him. 16 Q. Did he have more experience than you did in 17 licensing matters? 18 A. I would not say that. 19 Q. Would you describe him as a competent 20 nuclear licensing attorney? 21 A. Yeah, I think he's generally a competent	Page 152 1 Do you mean personally know or know of? 2 BY MR. O'REAR: 3 Q. Yes, know of, familiar with, have worked 4 with, have seen their work, have knowledge of their 5 work? 6 A. I would say I'm probably familiar with most 7 members of the nuclear bar. 8 Probably the ones I don't -- I probably 9 don't know a lot of newer people who have come in in 10 the last few years. But, you know, it's hard to put a 11 particular number but I know probably -- I either know 12 or know of many of the people who practice in the 13 field even before the Agency in any number of 14 capacities. 15 Q. How many -- when you were most recently 16 there as commissioner, how many members of the nuclear 17 bar regularly practice before the NRC? 18 A. That's hard for me to answer because, again, 19 you have lawyers representing clients in licensing 20 matters, in enforcement matters, in investigatory 21 matters. And much as a commissioner I'm not

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1 necessarily going to see -- see that.	1 morning that he wanted to make.
2 I will see -- as a commissioner you'll see	2 THE WITNESS: Yeah. I was asked a question,
3 pleadings that might come to you on appeals or in	3 whether I had had any contact with former TVA
4 particular hearings conducted by the Commission	4 officials regarding this matter. And I recall, I
5 itself. But it's hard for me to speculate on an	5 think Mr. McCollum had worked at TVA. So I would --
6 answer.	6 the only -- the amendment to my answer is when I met
7 Q. How about when you were general counsel, how	7 Mr. McCollum is probably that drop-in from Nuclear
8 many nuclear licensing lawyers regularly practiced	8 Development.
9 before the NRC?	9 And so technically that was having had a
10 A. You know, again, it's a speculative answer.	10 contact with a former TVA official. That's all I
11 There are probably a couple dozen who are, you know,	11 wanted to clarify.
12 regularly before the Agency but that doesn't mean that	12 MR. O'REAR: You ready?
13 there aren't -- you know, there are maybe associates	13 BY MR. O'REAR:
14 and some outside counsel that might be brought in.	14 Q. Let's go back on the record.
15 Q. Do you know Tim Matthews?	15 MR. LEMBKE: I think that was on the record,
16 A. I actually don't know him well. I know -- I	16 I hope.
17 know he practices but I think I've only met him a few	17 THE REPORTER: Yes, it was on the record.
18 times.	18 BY MR. O'REAR:
19 Q. Do you know Mr. Matthews to have practiced	19 Q. Do you have your report in front of you,
20 in the field of nuclear energy, nuclear licensing for	20 Exhibit 199?
21 over 25 years?	21 A. Yes, I do.
Page 154	Page 156
1 A. Yes, I know he has practiced before the	1 Q. Now, you opine in your report that
2 Agency, I think since the 1990s.	2 Bellefonte is a nuclear utilization facility, correct?
3 Q. Does Mr. Matthews have a reputation as a	3 A. Correct.
4 skilled and experienced nuclear licensing attorney?	4 Q. And your opinion differs from that of Mr.
5 A. I can't speak to his reputation.	5 Repka, correct?
6 Q. You don't know?	6 A. Correct.
7 A. As I said, I don't have a particular -- a	7 Q. And your opinion differs from the position
8 lot of particular contact with him, and I don't -- you	8 as testified to by Mr. Matthews. Is that correct?
9 know, I don't know where on the scale of things he's	9 A. That's correct.
10 considered in practice.	10 Q. In fact on that point your opinion is
11 Q. If you would direct your attention now, to	11 diametrically opposed to both of their opinions,
12 Exhibit --	12 correct?
13 MR. LEMBKE: This is a good point. Let's	13 A. That's correct.
14 take a five-minute restroom break.	14 Q. Do you agree that if Bellefonte is not a
15 MR. O'REAR: Let's do that. Let's go off	15 utilization facility, then the NRC is not required to
16 the record.	16 approve the transfer of the construction permits to
17 (Whereupon, a recess ensued.)	17 Nuclear Development before ownership of the Bellefonte
18 MR. LEMBKE: There's one point the witness	18 site was transferred to Nuclear Development?
19 needed to clarify from this morning.	19 A. What I have said in my opinion is that those
20 Before we get started, Mr. Burns had one	20 facilities given longstanding NRC practice and
21 point of clarification on some testimony he give this	21 precedent are considered utilization facilities. They

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<p>1 were utilization facilities under construction as 2 opposed to operating facilities. And as such, they're 3 subject to the construction permit and construction 4 authorization.</p> <p>5 And as I said in my opinion and is testified 6 as such in the construction permits letters.</p> <p>7 Q. I understand that. You didn't answer the 8 question, though.</p> <p>9 A. I did.</p> <p>10 Q. Do you agree that if Bellefonte is not a 11 utilization facility, then the NRC is not required to 12 approve the transfer of the construction permit before 13 ownership of the site is transferred to Nuclear 14 Development?</p> <p>15 MR. LEMBKE: Object to the form. You mean 16 under the Atomic Energy Act or any legal basis?</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Under the Atomic Energy Act or any legal 19 basis?</p> <p>20 A. So, please repeat the question because I 21 want to make sure I get the nuances in it.</p>	<p>1 MR. LEMBKE: I object to the form. The 2 witness does not need to answer.</p> <p>3 First of all, object to the statement that 4 he didn't answer the question. But beyond that, I 5 object on the basis of yes or no. He's entitled to 6 explain his answer.</p> <p>7 MR. O'REAR: But he needs to answer the 8 question.</p> <p>9 MR. LEMBKE: He already did answer the 10 question.</p> <p>11 MR. O'REAR: I don't think he did.</p> <p>12 MR. LEMBKE: Answer it again, Mr. Burns.</p> <p>13 THE WITNESS: Under your hypothetical if it 14 is not a utilization facility, which is not the case 15 here, then conceivably it could be -- it could be 16 transferred to -- to a new owner.</p> <p>17 But that's not the case that you have here.</p> <p>18 That is not the regulatory construction we have in 19 play and that is not the historical practice of the 20 Nuclear Regulatory Commission.</p> <p>21 BY MR. O'REAR:</p>
<p>1 BY MR. O'REAR:</p> <p>2 Q. Do you agree that Bellefonte is not a 3 nuclear -- excuse me. I'll start over.</p> <p>4 Do you agree that if Bellefonte is not a 5 utilization facility, then the NRC is not required to 6 approve the transfer of the construction permit to 7 Nuclear Development before ownership of the Bellefonte 8 plant site is transferred to Nuclear Development?</p> <p>9 A. I would -- again, I would only agree if 10 basically what was happening was that the project was 11 brought to termination and then that the NRC would be 12 satisfied that it was no longer on a path toward 13 completion of a utilization facility. And thus, that 14 transfer might be able to be made but that -- that 15 still would require some NRC action.</p> <p>16 I mean, if that -- let me stop there.</p> <p>17 Q. I don't think that answered my question.</p> <p>18 Yes or no; if Bellefonte is not a 19 utilization facility, does the NRC have to approve the 20 transfer of the construction permits before the site 21 is transferred to Nuclear Development?</p>	<p>1 Q. Do you agree that if Bellefonte is not a 2 utilization facility, then Section 101 of the Atomic 3 Energy Act does not prohibit the transfer of ownership 4 of the Bellefonte site by TVA to Nuclear Development 5 before the NRC approves the transfer of the 6 construction permit?</p> <p>7 A. Again, it's similar to my other answer. 8 It's assuming a hypothetical which does not exist in 9 this case.</p> <p>10 Q. And the hypothetical is your opinion that it 11 is a utilization facility. Is that correct -- or that 12 is, my statement or question that it is not, that's 13 the hypothetical, right?</p> <p>14 A. Correct.</p> <p>15 Q. And your testimony is based on your opinion 16 that it is, correct?</p> <p>17 A. Well, it's my opinion on it. But it is 18 based on my historic practice at the NRC and on 19 historic precedent of the NRC related to this matter.</p> <p>20 Q. And your opinion is diametrically opposed to 21 the opinions of Mr. Repka and Mr. Matthews, correct?</p>

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1 MR. LEMBKE: Well, let me note for the 2 report -- I'm going to I object on the basis of lack 3 of foundation because Mr. Matthews insisted he was 4 offering no opinions in this case.	1 argumentative. 2 BY MR. O'REAR: 3 Q. I direct your attention to Paragraph 20 of 4 your report.
5 MR. O'REAR: And I earlier didn't say 6 opinion. I said his testimony.	5 A. Okay. 6 Q. In Paragraph 20 of your report, you refer to 7 the regulatory definition of a utilization facility 8 found in 10 CFR 50.2, correct?
7 MR. LEMBKE: No, you actually said opinion 8 both times.	9 A. Yes. There's a reference to 50.2. 10 Q. And you do not reference the statutory 11 definition of a utilization facility found in the 12 Atomic Energy Act, did you?
9 MR. O'REAR: Okay. I don't think I did the 10 first time. But --	13 A. I -- in what section? In Section 11? 14 Q. In Section 20.
11 BY MR. O'REAR:	15 A. I did not provide a specific reference to 16 that.
12 Q. And your opinion is directly contrary to Mr. 13 Repka's opinion, correct?	17 Q. Have you provided a reference to a statutory 18 definition anywhere in your report?
14 A. My opinion differs from Mr. Repka's opinion. 15 However, Mr. Repka -- I note Mr. Repka, the opinion he 16 gives, is in fact what I would construe as sort of a 17 narrow trajectory in this case. And in fact, I think 18 I read his opinion as frankly, the preferable scenario 19 is the one I describe as what holds here.	19 A. I don't recall offhand.
20 And I would say the same about Mr. Matthews' 21 testimony.	20 Q. Let's -- do you have there the 10 CFR 21 Section 50.2 provision that I had submitted as an
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1 BY MR. O'REAR: 2 Q. And your opinion is it differs from the 3 exhibit that Mr. Matthews prepared called the 4 Regulatory Path Forward. Is that correct?	1 exhibit? Do you see that in your stack?
5 A. That's correct. But again, I would say that 6 my opinion differs -- I agree with Mr. Matthews that 7 the -- the way to go, which he describes as the 8 preferable way to go, is the way I have described -- 9 what I've described in my expert opinion.	2 A. That's Exhibit 129? 3 Q. No. I don't -- no, it is an unmarked 4 exhibit.
10 When he says there is another thing and 11 there is some risk of some violation and maybe it's 12 that. Well, in effect, the risk of violation. 13 Essentially it is an admission that is not fully law 14 abiding to proceed that way.	5 MR. LEMBKE: Oh. What's the number? 6 MR. O'REAR: The number will be 203. 7 MR. LEMBKE: But I'm getting, what is it 8 we're looking for in the stack?
15 Q. Well we dispute that and I don't think that 16 was responsive to my question.	9 MR. O'REAR: It's just the CFR, 10 CFR 50.2. 10 THE WITNESS: I'm seeing a 50.5 but I don't 11 know where -- maybe it's back here.
17 MR. LEMBKE: Move to strike that statement 18 by counsel.	12 MR. LEMBKE: It should be towards the back 13 of the stack.
19 BY MR. O'REAR:	14 THE WITNESS: Yes, I have it.
20 Q. If you had --	15 MR. LEMBKE: Okay. Please mark that as 16 Exhibit 203.
21 MR. LEMBKE: Object to the statement as	17 (Burns Exhibit No. 203 was marked for 18 identification.)
	19 BY MR. O'REAR:
	20 Q. Now, I would also like you to locate -- it 21 should be right next to where that exhibit was -- the

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1 next exhibit, which is 42 USC Section 2014, the 2 definition section of the -- 3 A. Yeah, I have it. 4 Q. -- Atomic Energy Act. 5 MR. O'REAR: Mark that one as Exhibit 204. 6 (Burns Exhibit No. 204 was marked for 7 identification.) 8 BY MR. O'REAR: 9 Q. Now, is it your understanding as a lawyer 10 that the statutory definition takes precedence over 11 the regulatory definition to the extent they are 12 inconsistent? 13 A. If they've been found inconsistent. 14 Q. Okay. And in your mind since you didn't 15 cite the statutory definition, what role did it play 16 in forming an opinion on what is a utilization 17 facility? 18 MR. LEMBKE: Objection, vague. 19 BY MR. O'REAR: 20 Q. So what role, if any, did it play in forming 21 your opinion?	1 Q. The Agency can't change the statutory 2 definition of utilization facility, can it? 3 A. Right. It's not going to change the statute 4 itself. But what -- as I said, what the Agency does 5 have is the authority to implement it and apply it in 6 its regulatory framework. And that's what it's doing. 7 Q. Wouldn't you agree the statutory definitions 8 are paramount? 9 A. Paramount to what? 10 Q. Paramount to any regulatory definition or 11 any interpretation or any Commission opinion or any 12 enforcement action opinion? 13 MR. LEMBKE: Objection, asked and answered. 14 BY MR. O'REAR: 15 Q. The statutory definition trumps all of those 16 determinations? 17 MR. LEMBKE: Objection, asked and answered. 18 You can answer it again, Mr. Burns. 19 THE WITNESS: I would disagree with the 20 characterization that it trumps. Because again, you 21 have to look holistically at the statute and what the
1 A. Well, the statutory definitions have a role 2 but the other -- the other part of this is you have to 3 consider the Agency's authority under the Act and its 4 power in terms of adopting regulations, interpreting 5 and applying the statutory provisions. 6 And again, this is a definitional provision, 7 but the Atomic Energy Commission and then the NRC have 8 broad authority with respect to implementation and 9 basically engineering the regulatory framework under 10 which is -- under which it acts and which it applies 11 the requirements of the Act to it. 12 So, from that standpoint -- now, the 13 definition is relevant but I'm as much interested in 14 the terms of the implementation of the regulatory 15 provision as well as other statutory provisions for 16 the application of these requirements. 17 There's a famous case, a pivotal case from 18 the late 1960s that talks about the Agency being, you 19 know, with extraordinarily broad discretion in the 20 implementation of its authority. So I think that -- 21 that's all you're reflecting here -- reflected here.	1 statute does is provide extraordinarily broad 2 authority in terms of the implementation. 3 So yes, the definition -- I don't dispute 4 that the definition has a legal consequence and it has 5 legal significance. But the other -- we need to go 6 through the rest of the statute and look at what the 7 powers are in terms of how the Agency is to implement 8 that authority. And that's what is particularly 9 important, is the authority to control its regulatory 10 framework and its basically oversight of the 11 facilities subject to its review. 12 BY MR. O'REAR: 13 Q. Well, if we're trying to determine what is 14 the meaning of a utilization facility under federal 15 law, wouldn't the first place you'd look be the 16 statute that defines utilization facility? 17 A. Well, I would agree, you would look at the 18 statute. And then you would look at what the Agency 19 has done. And that definition in 10 CFR 50.2 for 20 example, it's my guess it goes back to AEC, the Atomic 21 Energy Commissions days.

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<p style="text-align: right;">Page 169</p> <p>1 In fact it goes back -- if I look at your 2 document, on the very last page of it, it says, 3 original course, 21 Federal Register 355 January 19th, 4 1956.</p> <p>5 Q. Okay. You said the utilization facility 6 definition in the statute is relevant and has legal 7 consequence, but isn't it at the top of the spectrum 8 in terms of how you look at the definition of 9 utilization facility?</p> <p>10 MR. LEMBKE: I object to the form. This is 11 argumentative and repetitive.</p> <p>12 He has already answered this question 13 repeatedly and you just don't like his answer, so 14 you're asking it again and again.</p> <p>15 MR. O'REAR: I'm not sure he's answered.</p> <p>16 MR. LEMBKE: He has answered it.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. All right. Well, answer that last question 19 then.</p> <p>20 A. I answered. I said it is not the ultimate 21 and dispositive provision because there are other</p>	<p style="text-align: right;">Page 171</p> <p>1 MR. LEMBKE: Let me object. That was an 2 incomplete recitation of that definition. And your 3 question now, is based upon incomplete recitation of 4 the --</p> <p>5 MR. O'REAR: Well, I will read the rest of 6 it. But the rest of it is immaterial to that and it 7 talks about the quantity of special nuclear material, 8 the character of it.</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. So my question to you, Mr. -- and you may 11 consider the entire language of Section 1, subsection 12 CC -- is Bellefonte capable of making use of special 13 nuclear material?</p> <p>14 A. Bellefonte in its current condition is an 15 uncompleted utilization. It cannot -- It cannot 16 sustain a chain reaction basically at this point in 17 time.</p> <p>18 What I would point out with respect to this 19 definition, which goes to the point I was making a few 20 minutes ago, is it talks about the Agency. It talks 21 about the term "utilization facility" means a</p>
<p style="text-align: right;">Page 170</p> <p>1 provisions in the Atomic Energy Act which pertain to 2 the Commission's authority and the implementation of 3 the authority through the Act.</p> <p>4 And what the Commission has done, is it's 5 done that through its regulations and these are 6 regulations of longstanding existence, going back to 7 1950.</p> <p>8 Q. All right. So let's look at the statutory 9 definition, if you will, which is Exhibit 204. And if 10 you would turn to the fifth page of the exhibit, 11 subsection CC. You're familiar with this, right?</p> <p>12 A. Yes, I am.</p> <p>13 Q. All right. It's got two parts to it. In 14 the first part it says, "A utilization facility means 15 any equipment or device except an atomic weapon 16 determined by rule of the Commission to be capable of 17 making use of special nuclear material." Do you see 18 that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Now, is the Bellefonte plant capable of 21 making use of special nuclear material?</p>	<p style="text-align: right;">Page 172</p> <p>1 equipment or device -- except the -- determined by 2 rule of the Commission to be capable."</p> <p>3 And so the rule -- that's why I think 50.2 4 and other rules of the Commission that govern the 5 possession and the construction and ultimately 6 operation of a utilization facility are relevant.</p> <p>7 Q. What is the -- so there is no equipment or 8 device that Bellefonte is capable of making use of 9 special nuclear material. Is that correct?</p> <p>10 MR. LEMBKE: Objection, asked and answered.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Is that correct?</p> <p>13 A. I don't know specifically what remains at 14 the Bellefonte site. For example, I presume the 15 reactors vessels are there but I don't -- I don't 16 contest that the plant cannot be currently put into 17 operation in its current configuration.</p> <p>18 BY MR. O'REAR:</p> <p>19 Q. Okay. Do you dispute Mr. Chardos' testimony 20 that the plant cannot make use of special nuclear 21 material?</p>

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1 A. I think I answered that before. I said I 2 don't dispute that in its current condition. 3 Q. And then let's look at part two of that 4 definition. "Any important component part especially 5 designed for such equipment or device as determined by 6 the Commission." Do you see that? 7 A. I do. 8 Q. Okay. And so, is there a component part of 9 this plant that constitutes any equipment or device 10 capable of making use of special nuclear material? 11 A. Well, that's not what the definition says. 12 It's any important component part especially designed 13 for such equipment or device. 14 Q. Okay. What is the component part especially 15 designed for such equipment or device at a utilization 16 facility? 17 A. There would be any number of things, but the 18 reactor vessel would be an important thing. 19 I think the significant thing here with 20 respect to that is that while the NRC oversees 21 significant components -- or it's not only significant	1 A. Right. 2 Q. And when the statutory definition says as 3 determined by the rule by the Commission, is this a 4 rule, 10 CFR 50.2? 5 A. Yes, this is a rule. 6 Q. And if you go over toward the end, next to 7 the last page of the exhibit, we have a definition of 8 utilization facility, correct? 9 A. Correct. 10 Q. All right. It says, "Any nuclear reactor 11 other than one designed or used primarily for the 12 formation of plutonium or U233," correct? 13 A. Right. 14 Q. Okay. So with respect to Bellefonte, we're 15 not talking about a reactor designed or used primarily 16 for the formation of plutonium or U233, are we? 17 A. I think that's my understanding. 18 Q. Yeah, and so we're talking about just a 19 nuclear reactor other than that, right? 20 A. Right. 21 Q. And that's consistent with the fact that
1 components, it's all the safety related construction 2 and related construction and the components that may 3 be used in a facility. This provision, there's not 4 and licensing of -- that you must have a license to 5 possess the steam generator. What you have to have a 6 license for is to carry out activities at the site for 7 which you are licensed. 8 Q. All right. So, are you saying that there's 9 no component part at Bellefonte that is a utilization 10 facility? 11 A. I'm not sure. I'm not sure exactly what the 12 -- those component parts, but the fact that they -- 13 for example, a steam generator, although we understand 14 may be solely depleted, is there. That does not have 15 a particular significance to me. 16 Q. All right. So Section 2 has no significance 17 to you? Section 1, that's the pertinent definition 18 here. Is that right? 19 A. Yes, I believe so. 20 Q. Now, if you would look at the regulatory 21 definition, which is Exhibit 203.	1 this is not a production facility, correct? 2 A. Yes, this not that. 3 Q. It never was designed to be a production 4 facility, was it? 5 A. Not that I'm aware of. 6 Q. And there is no nuclear reactor at 7 Bellefonte capable of conducting nuclear fission, is 8 there? 9 A. There is nothing currently capable. There 10 is -- in fact I think it was in the context of the -- 11 the definition, something that is designed -- designed 12 or ultimately designed to be finished to do so. 13 Q. So is it your opinion that once the 14 Bellefonte plant was designed back in early '70s, it 15 at that point became a utilization facility? 16 A. Once construction permit was issued, the 17 construction permit is for a utilization facility, and 18 it is for the construction of the utilization facility 19 at the site. 20 That can go on, there can be changes to it 21 over the years but basically the NRC considers that,

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<p>1 under historic practice as cited in the Court, and my 2 experience has the utilization facility subject to the 3 NRC's control. I concede that it is not one that is 4 capable, at that time, of the being put into 5 operation.</p> <p>6 Q. Well, let me go back to my question because 7 I don't think you answered it.</p> <p>8 When -- when the plant was originally 9 designed, was it at that point a utilization facility?</p> <p>10 A. I'm not sure I understand the question.</p> <p>11 Q. Was the ground and the grass at the site a 12 utilization facility when the design was prepared?</p> <p>13 A. The ground and the grass are not -- not the 14 facility. They're the place where the facility would 15 be located. The design is something that has to be 16 approved to go forward; and with fraction of the 17 facility, that is considered a utilization facility 18 that's under construction at the site. The design may 19 change over the years.</p> <p>20 There may be additional requirements the NRC 21 imposes, there may be design changes that the</p>	<p>1 opined it's a utilization facility.</p> <p>2 THE WITNESS: Well, the one designed, the 3 design which is going to be somebody referenced by 4 various applicants who seek a construction permit, 5 that is designed as a utilization facility.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. The design plans do not make it a 8 utilization facility, do they?</p> <p>9 A. At a particular site? Once -- once you are 10 underneath the NRC's authority and have initiated the 11 construction -- initiated the construction or taken 12 actions under the NRC's authority, it is considered -- 13 it is considered a utilization facility, albeit it's 14 got to progress.</p> <p>15 So, that's partly -- part of that is design, 16 part of it that, you know, building administrative 17 buildings, part of that's building security things and 18 then part of it's building the reactor facility 19 itself. So I think that's what is considered.</p> <p>20 And I think that -- again, that's the 21 longstanding practice of the staff and that's as</p>
<p style="text-align: center;">Page 178</p> <p>1 applicant wishes to consider and those are there. But 2 it doesn't -- from my standpoint for a site that is to 3 do something other than be terminated and go away, 4 does not make it less of a utilization facility for 5 purposes of regulatory control.</p> <p>6 Q. Well, we're asking -- I'm asking you a 7 different question.</p> <p>8 Was the ground and grass at Bellefonte a 9 utilization facility as soon as the design was 10 prepared for the facility?</p> <p>11 A. Are you assuming it owns the license or this 12 is prior to its licensing?</p> <p>13 Q. When it was designed. I'm referring to your 14 use of the word "design," the definition.</p> <p>15 MR. LEMBKE: I'm going to object to the 16 form. Are you meaning utilization facility within the 17 meaning of the definition of utilization facility?</p> <p>18 And which definition?</p> <p>19 MR. O'REAR: I'm -- well, whatever 20 definition he wants to use. He was presented with two 21 here; statutory and regulatory. He's the one that</p>	<p style="text-align: center;">Page 180</p> <p>1 reflected in Mr. Case's letter.</p> <p>2 Q. Did the design plans in and of themselves 3 create a utilization facility?</p> <p>4 MR. LEMBKE: Object, it's asked and 5 answered. He just answered that question.</p> <p>6 MR. O'REAR: I don't think he did answer it.</p> <p>7 MR. LEMBKE: He just told you once it's 8 under the authority and they start to construction, 9 it's a utilization facility.</p> <p>10 MR. O'REAR: I'm not asking that question.</p> <p>11 BY MR. O'REAR:</p> <p>12 Q. Before construction, when it was designed, 13 is it a utilization facility?</p> <p>14 A. It's designed for a utilization facility.</p> <p>15 Q. Is it a utilization facility? I'm not 16 asking you if it's designed for one.</p> <p>17 I'm asking you: Is it a utilization 18 facility?</p> <p>19 MR. LEMBKE: Hold on.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. Is it a utilization facility?</p>

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1 MR. LEMBKE: Hold on, Mr. Burns.	1 A. But this is before they actually started
2 Mr. O'Rear, you are not going to yell at our	2 pouring concrete or things like that?
3 witness.	3 Q. Yes.
4 MR. O'REAR: Okay. Well, I --	4 A. I think -- that's an interesting question.
5 MR. LEMBKE: I think we need to take a	5 I'm not sure, quite, if I faced that.
6 five-minute break. We're going to take a five-minute	6 I go back to -- I think certainly after
7 break.	7 construction begins and you're starting to proceed
8 (Whereupon, a recess ensued.)	8 toward creation of the facility itself, you're
9 MR. O'REAR: Back on the record.	9 certainly a utilization facility subject to NRC
10 BY MR. O'REAR:	10 control on the site.
11 Q. Mr. Burns, let me see if I can simplify	11 Prior to that time, prior to basically
12 these questions for you and refer to specific points	12 disturbing the green field or however you want to
13 in time.	13 characterize it, I think it's unclear.
14 A. Okay.	14 And part of why I'm saying that is, for
15 Q. Do you understand that the design for	15 example, there are certain activities that can
16 Bellefonte was originally prepared sometime in the	16 proceed. For example, before a construction permit
17 early '1970s?	17 under a limited work authorization, that in themselves
18 A. Yes, I do understand that because that's	18 do not involve in effect safety related construction
19 inherent in terms of the determinations that were made	19 or actually matters that would be, you know, advancing
20 in the construction permit's review and determination.	20 the facility itself.
21 Q. And I want you to focus on that point in	21 You know, for example, building an
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1 time which is prior to the issuance of any	1 administrative building on the site or a parking lot
2 construction permit or prior to the beginning of any	2 or something.
3 construction. Okay?	3 Q. Well, I am referring to any construction.
4 A. Okay.	4 So is it your testimony that it is not a utilization
5 Q. Was Bellefonte a utilization facility at	5 facility at the time the construction permits are
6 that time?	6 issued and the site is not under construction?
7 A. Before the construction permit?	7 A. I'm saying that -- I'm saying that's an
8 Q. Yes.	8 interesting question. I'm not sure I have had or I'm
9 A. No. There was no approval of the site to	9 aware of an experience where that kind of dichotomy is
10 host a utilization facility prior to the issuance of	10 drawn because basically when the construction permit
11 construction permits in 1974.	11 is issued, it's issued for the construction of a
12 Q. Now, I want you to focus on the time that	12 utilization facility. And that -- from then on out,
13 the construction permits were issued in 1974.	13 you are until you turn the permit or you turn on the
14 A. Okay.	14 reactor, you are subject to NRC's preliminary control
15 Q. And before construction began. Okay?	15 and I think that's significant.
16 A. Okay.	16 Q. I'm not asking you about preliminary
17 Q. Was Bellefonte a utilization facility at	17 control. I'm asking about whether it is a utilization
18 that time?	18 facility.
19 A. And this is they held the construction	19 So you're saying -- really, are you saying
20 permit?	20 you can't answer that question or are you saying it's
21 Q. Yes.	21 not a utilization facility at that point?
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1 A. Again, at what point? I want to be careful.	1 BY MR. O'REAR:
2 Q. At the point that the construction permit	2 Q. Do you have an opinion on when or how much
3 had been issued but no construction had begun.	3 construction it takes for a plant site to become a
4 A. I think it would be speculative to say that	4 utilization facility?
5 at that point it's not a utilization facility. And	5 A. No, I don't have a particular percentage
6 I'm not sure it matters because, again, you're subject	6 that I would say qualifies it or disqualifies it.
7 to the NRC's control. You can't do anything about the	7 Again, you have to look at this holistically
8 site without the NRC's permission at that point.	8 from the standpoint of historic application of NRC and
9 Q. I don't understand your answer that it is	9 its predecessor the AEC, regulatory framework for
10 speculative to say it is not a utilization facility.	10 licensing for utilization facilities, nuclear power
11 A. Well, it's because the construction permit	11 reactors. And that basically had, you know, some of
12 is for construction of a utilization facility. And	12 the things we've cited here. That historically has
13 yes, you know, I would concede at some point somebody	13 said, we're treating it as a utilization facility
14 actually starts digging a hole, pouring foundation,	14 under construction.
15 you know, putting in piles to support a building,	15 Q. Okay. In your opinion, is there a certain
16 bringing equipment on the site. And clearly under	16 point in a continuum of construction when the plant
17 that circumstance, those circumstances that's	17 moves from not being a utilization facility to being a
18 proceeding, that's a utilization facility.	18 utilization facility?
19 Q. All right. Let me -- well, then let me ask	19 A. Characterized that way, no.
20 you this. At what point of the construction process	20 What I would say is there is a significant
21 does it become a utilization facility?	21 point and that is when that facility is constructed to
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1 MR. LEMBKE: I object, that mischaracterizes	1 the point where basically you're triggering the second
2 his testimony.	2 level or the second phase of regulation, which is a
3 MR. O'REAR: I don't think it does.	3 potential to operate the facility. And that's the
4 MR. LEMBKE: He never said that that's --	4 distinction in terms of phasing of a utilization
5 MR. O'REAR: All right. Then answer the	5 facility.
6 question, then.	6 Q. Well, isn't the point triggered by the
7 BY MR. O'REAR:	7 definition and that is either that statutory
8 Q. Is it a utilization facility before	8 definition that it must be capable of making use of
9 construction is begun?	9 special nuclear material or the regulatory definition,
10 A. Before construction is begun. You know, I	10 it must be capable of conducting a nuclear reaction.
11 think potentially -- potentially no. But, again, I'm	11 Aren't those the trigger points?
12 not sure that it matters.	12 A. No, they are not the triggering points, and
13 Q. But it might matter, so that's why I'm	13 that is not the -- for practice.
14 asking.	14 Again, I refer back to the Marble Hill
15 A. Not in this case.	15 decision and refer back to Mr. Case's letter to Dr.
16 Q. I think so.	16 Asperger.
17 MR. LEMBKE: Move to strike, Counsel.	17 Q. Well, how are the --
18 MR. O'REAR: Well, I move to strike his	18 MR. LEMBKE: Wait a minute. You're talking
19 answer as argumentative.	19 over the witness. You're not letting him finish the
20 MR. LEMBKE: You're moving to strike the	20 answer.
21 question?	21 MR. O'REAR: I didn't know he wasn't

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<p style="text-align: right;">Page 189</p> <p>1 finished. I thought he finished.</p> <p>2 THE WITNESS: No. And those examples and</p> <p>3 longstanding precedent are how the Agency has treated</p> <p>4 and focused on it.</p> <p>5 And again, you have to view this</p> <p>6 holistically. You cannot do hair splitting between a</p> <p>7 utilization facility and the construction permit.</p> <p>8 It's viewed holistically as one thing. That's the</p> <p>9 regulatory control, and as long as there's someone</p> <p>10 who's interested in pursuing it, the NRC has authority</p> <p>11 over it and it doesn't give up that authority lightly</p> <p>12 -- without its permission.</p> <p>13 BY MR. O'REAR:</p> <p>14 Q. I'm not asking you about the authority and</p> <p>15 plenary jurisdiction. I'm not asking you about that.</p> <p>16 I'm asking you about at what point does this</p> <p>17 plant site meet the definition either under the</p> <p>18 statute or under the regulation of a utilization</p> <p>19 facility?</p> <p>20 A. Under construction it is considered a</p> <p>21 utilization facility. When it is ready for operation,</p>	<p style="text-align: right;">Page 191</p> <p>1 over the witness but I didn't hear the witness</p> <p>2 speaking. I thought he was finished with his answers.</p> <p>3 MR. LEMBKE: May he finish now?</p> <p>4 MR. O'REAR: Sure.</p> <p>5 MR. LEMBKE: If you remember.</p> <p>6 THE WITNESS: I'm not sure I remember what</p> <p>7 else I was going to have at this point.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. I'm not asking you about construction permit</p> <p>10 jurisdiction or preliminary jurisdiction. I'm asking</p> <p>11 you about the definition of a utilization facility.</p> <p>12 And so my question was this. When the</p> <p>13 initial concrete pad is poured at the plant site, is</p> <p>14 the plant site a utilization facility at that point in</p> <p>15 time?</p> <p>16 A. It is considered so for purposes of the</p> <p>17 construction permit.</p> <p>18 Q. It is considered a utilization facility as</p> <p>19 defined by statute and regulation at that time. Is</p> <p>20 that what you're saying?</p> <p>21 A. Defined by regulation and by historic</p>
<p style="text-align: right;">Page 190</p> <p>1 it is a utilization facility that is subject to then</p> <p>2 the operating license requirements of the Agency.</p> <p>3 Q. When it is under -- when it is under</p> <p>4 construction and the initial construction at the site</p> <p>5 is the pouring of a concrete pad, is the plant site a</p> <p>6 utilization facility at that point in time?</p> <p>7 A. It can't be used as one at that point but it</p> <p>8 is considered for purposes of NRC's governance of the</p> <p>9 construction permit. It's proceeding --</p> <p>10 Q. You're not understanding the question.</p> <p>11 MR. LEMBKE: No. Hold on a second, Mr.</p> <p>12 O'Rear.</p> <p>13 MR. O'REAR: Don't yell.</p> <p>14 MR. LEMBKE: In the last five minutes you've</p> <p>15 spoken over the witness while he's still answering the</p> <p>16 question, that's improper.</p> <p>17 MR. O'REAR: All right. Mr. Lembke, there</p> <p>18 may be some disruption in the video, but what I'm</p> <p>19 hearing is the witness has stopped.</p> <p>20 I did not hear him continuing to talk on</p> <p>21 either question I raised. So I apologize if I talked</p>	<p style="text-align: right;">Page 192</p> <p>1 practice. And that is who controls, who acts, who has</p> <p>2 the authority to act. That's the -- of the regulatory</p> <p>3 framework.</p> <p>4 Q. And so the historical framework you're</p> <p>5 referring to is primarily the Asperger letter?</p> <p>6 A. And the Marble Hill decision as well, I</p> <p>7 think references in there. I think it references the</p> <p>8 Commission -- decision.</p> <p>9 But again, what those look at is how the</p> <p>10 Agency looks at those who have a stake or presume to</p> <p>11 have a stake in a facility, and that may be under</p> <p>12 construction.</p> <p>13 Q. All right. Well, let me say this one time,</p> <p>14 and I want to make sure we're not missing each other.</p> <p>15 I want to make sure that I ask the right question and</p> <p>16 you answer that question and you're not answering some</p> <p>17 other question.</p> <p>18 When the construction began and they have</p> <p>19 poured on the concrete pad on the site, is that site</p> <p>20 at that point in time a utilization facility?</p> <p>21 MR. LEMBKE: Object, asked and answered.</p>

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<p style="text-align: right;">Page 193</p> <p>1 You can answer it again, Mr. Burns.</p> <p>2 THE WITNESS: Yes, laid out in my expert</p> <p>3 report and I emphasize that relates to the regulatory</p> <p>4 framework that is imposed through the construction</p> <p>5 permit, and that's how they're considered.</p> <p>6 And that's -- as I say, you know, based on</p> <p>7 my experience and based on, you know, the Marble Hill</p> <p>8 decision, the Asperger decision, I think that's</p> <p>9 correct.</p> <p>10 BY MR. O'REAR:</p> <p>11 Q. The Asperger decision in the letter from an</p> <p>12 acting director cannot change the statutory definition</p> <p>13 or the regulatory definition, can it?</p> <p>14 A. No. The Asperger -- no, the decision is</p> <p>15 that's not the authority of the director of a nuclear</p> <p>16 act or regulation. But it is consistent with the</p> <p>17 Agency's application and interpretation.</p> <p>18 Q. The administrative determinations in the</p> <p>19 Marble Hill and the Seabrook cases cannot change the</p> <p>20 statutory definition and the regulatory definition of</p> <p>21 a utilization facility, can it?</p>	<p style="text-align: right;">Page 195</p> <p>1 termination or until the end of the -- and subsequent</p> <p>2 decommission of the facility if construction is</p> <p>3 completed and operation is authorized." Do you see</p> <p>4 that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. What do you mean by plenary control?</p> <p>7 A. That means that the NRC has absolutely --</p> <p>8 absolute control over the activities on the site.</p> <p>9 Q. Okay.</p> <p>10 Does the NRC have plenary control over</p> <p>11 Nuclear Development as an applicant for transfer of</p> <p>12 the construction permit?</p> <p>13 A. I'm not sure I understand the question.</p> <p>14 Q. I don't know how I can state it any more</p> <p>15 directly.</p> <p>16 A. Please repeat the question.</p> <p>17 Q. Does the NRC have man plenary control over</p> <p>18 the Nuclear Development as an applicant for transfer</p> <p>19 of the construction permit?</p> <p>20 A. Well, to the extent that Nuclear Development</p> <p>21 is interested in interacting with the NRC to obtain</p>
<p style="text-align: right;">Page 194</p> <p>1 A. Well, they can't change it. They can't</p> <p>2 change the words of the statute. They can apply, in</p> <p>3 fact interpret -- interpret those conditions and they</p> <p>4 can in, terms of how they will be applied in the</p> <p>5 regulatory context.</p> <p>6 Q. Let's move on. Let's move to Paragraph 21</p> <p>7 of your report. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. And I'd like to direct your attention to the</p> <p>10 sentence that begins in the middle of Paragraph 21</p> <p>11 starting with the word "effectively." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And I'll just read it. It says,</p> <p>15 "Effectively the regulatory framework under Section</p> <p>16 101, 103 and 185 of the Atomic Energy Act and the NRC</p> <p>17 implementing regulations means that once an</p> <p>18 authorization is issued to construct a utilization</p> <p>19 facility on a site, the entity holding the permit and</p> <p>20 the site are subject to the plenary control of the NRC</p> <p>21 until the permit is canceled due to project</p>	<p style="text-align: right;">Page 196</p> <p>1 such transfer, yes, it has that engagement to do so.</p> <p>2 Yes.</p> <p>3 Q. Okay. And in fact there's a rule that</p> <p>4 provides that the NRC has jurisdiction over applicants</p> <p>5 for licenses, correct?</p> <p>6 A. I'm not sure which rule you're referring to</p> <p>7 there.</p> <p>8 Q. Well, look in your materials there and look</p> <p>9 for 10 CFR 50.5.</p> <p>10 A. 50.5. Okay. Hold on. Okay.</p> <p>11 Q. Are you familiar with this CFR section?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Does this section provide that any licensee</p> <p>14 or an applicant for a license may not -- and then it</p> <p>15 states in two provisions what they may not do and the</p> <p>16 sanctions that may be imposed by -- by the NRC?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so for purposes of our case and</p> <p>19 the Nuclear Development application for a license,</p> <p>20 under at least A2 of this code of federal regulation,</p> <p>21 that Nuclear Development is subject to NRC</p>

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Page 197 1 jurisdiction and NRC sanction if it were to submit 2 information regarding the application that it knows to 3 be incomplete or inaccurate in some respect material 4 to the NRC, right? 5 A. That's correct. That's the full statement. 6 Q. Okay. And if Nuclear Development were to 7 represent in its application that it would not begin 8 construction on the site or conduct any licensed 9 activities on site until the construction permits have 10 been transferred and violated that representation, the 11 NRC has jurisdiction over that and can enforce the 12 representation, correct? 13 MR. LEMBKE: Object to the form, vagueness 14 as to enforce the representation. 15 MR. O'REAR: Okay. 16 BY MR. O'REAR: 17 Q. Could sanction or issue a cease and desist 18 order to the Nuclear Development, correct? 19 A. Okay. I'm going to have to answer that two 20 ways because you asked me a question about the false 21 statement provision in 50.5.	Page 199 1 applicant may not engage in deliberate misconduct 2 which causes or would have caused if not detected a 3 licensee or applicant to be in violation of any rule, 4 regulation or order? 5 A. Right. 6 Q. Or any term, condition or limitation of any 7 license issued by the Commission. 8 So the NRC is subject to -- excuse me, the 9 Nuclear Development is subject to NRC's imposition of 10 the construction permit requirements while over 11 Nuclear Development, while it is an applicant and 12 before the construction permits are issued. Is that 13 correct? 14 MR. LEMBKE: Objection, vague. 15 MR. O'REAR: I don't think it's vague. 16 BY MR. O'REAR: 17 Q. You can answer. 18 A. Well, I've got to -- you've got to 19 understand the context again. From the standpoint -- 20 and I'll say it -- explain it all. 21 One, as an applicant, Nuclear Development is
Page 198 1 And yes, if it represented something, there 2 might be a question. Again, depending on the timing 3 of when the statement was made and when the unlawful 4 conduct was conducted, there may be a question whether 5 a false statement was made. 6 But, second, and that would not be under 7 this provision, that would be under other provisions. 8 For example, basically a violation of Section 185 with 9 respect to the necessity of a construction permit, the 10 NRC could take enforcement action for undertaking 11 activities which are not -- which it has not 12 authorized. 13 And there, it would be taking such action 14 against Nuclear Development as a non-licensee. 15 Because at that point, assuming it went forward and 16 did construction, didn't do what it said it was going 17 to do, it has no license authority and would then be 18 sanctioned -- it could be sanctioned as undertaking an 19 activity without proper NRC authorization. 20 Q. Well, it -- in subparagraph one of Section 21 A, this code section, it says that a licensee or an	Page 200 1 subject to sanctions under the statute for making 2 false statements. That I understand. 3 And secondly, what I was trying to say is if 4 Nuclear Development does not have authority to do 5 certain things that require NRC authority, it is 6 subject to sanction, even apart from this rule. But 7 this rule is intended to sort of consolidate that. So 8 that's what my answer was trying to address. 9 MR. LEMBKE: Did you mark that exhibit or 10 not? 11 MR. O'REAR: It should be Exhibit 205. 12 (Burns Exhibit No. 205 was marked for 13 identification.) 14 MR. O'REAR: So for the record, the exhibit 15 which is 10 CFR 50.5 is marked as Exhibit 205. 16 BY MR. O'REAR: 17 Q. Directing your attention to Paragraph 23 of 18 your report. 19 A. Okay. 20 Q. It begins discussing the construction 21 permit, and then at the bottom of the Page 6 it says,

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<p style="text-align: right;">Page 201</p> <p>1 "TVA's preliminary safety analysis report, PSAR, 2 Section 2.12 describes the particular -- in particular 3 that the exclusions area will be owned by the United 4 States and in custody of TVA." Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Now, the PSAR is not part of the 7 construction permit, is it?</p> <p>8 A. It's not -- it's not specifically within it. 9 It is relevant to the construction permit as part of 10 the application. And eventually to go into operation 11 you have to update it to the "final safety analysis."</p> <p>12 Q. The PSAR -- I'm sorry.</p> <p>13 A. No, I'm done.</p> <p>14 Q. I didn't -- if you were talking when I spoke 15 I didn't hear your word. I could see your mouth 16 moving, that's all.</p> <p>17 The PSAR is not mentioned in the 18 construction permit, is it?</p> <p>19 A. I don't specifically recall.</p> <p>20 Q. Well, the PSAR is not a condition of the 21 construction permit, is it?</p>	<p style="text-align: right;">Page 203</p> <p>1 MR. LEMBKE: Well, that -- I object to the 2 form because that misstates the permit. 3 It would help if you introduced the permit 4 because the permit says as a condition, it talks about 5 the application in Section 3 and it talks about the 6 applicant's site in Section 2.</p> <p>7 BY MR. O'REAR:</p> <p>8 Q. Mr. Burns, is the PSAR in compliance 9 therewith a condition of compliance with the 10 construction permit?</p> <p>11 MR. LEMBKE: Same objection.</p> <p>12 THE WITNESS: I guess my answer would be 13 this is that while I don't -- while I don't see a 14 specific reference to the PSAR itself, it does refer 15 to the application, part of which is the PSR -- PSAR. 16 And what I would consider it is part of what we call 17 the licensing basis for the facility.</p> <p>18 And the licensing basis is something that 19 basically the applicant when it receives the permit 20 has to follow. For example, I don't think that TVA -- 21 I forget what the facility is, I think a BWR, one of</p>
<p style="text-align: right;">Page 202</p> <p>1 A. Again, I have to look but I don't 2 specifically recall how it's referenced, if it's 3 referenced in the permits themselves.</p> <p>4 It is significant because it is background 5 and forms the basis for the NRC's determination 6 whether or not to grant a permit or not.</p> <p>7 Q. But you can't -- you're not opining 8 here today that the PSAR is a condition of the 9 construction permit, are you?</p> <p>10 MR. LEMBKE: I object to the form. You mean 11 every -- every provision in it or a particular --</p> <p>12 MR. O'REAR: The construction permits as we 13 all know have conditions listed. And the PSAR is not 14 referenced or mentioned as part of the conditions of 15 the permit.</p> <p>16 MR. LEMBKE: Well, I object to the form of 17 that because the permits reference the application. 18 And he just testified the PSAR is part of the 19 application.</p> <p>20 MR. O'REAR: It is not a condition of the 21 permit, that's my question.</p>	<p style="text-align: right;">Page 204</p> <p>1 the series of a boiling water reactor. But if it 2 decided to change it to a, you know, a Westinghouse 3 pressurized reactor, it would go need that permission. 4 And part of that it is I think because, again, your 5 expectation and the governance is carrying out 6 activities as specified in the permit.</p> <p>7 So the PSAR has relevance whether or not it 8 says -- and the PSARs aren't written for the most part 9 that every statement in it is a license condition 10 requirement. It describes what's going to go on at 11 the site, for example.</p> <p>12 Q. I'll refer to Paragraph 24 of your report, 13 please.</p> <p>14 A. Yes.</p> <p>15 Q. At the end that you say, "Within its 16 statutory authority the NRC's choice of sanction is 17 quintessentially a matter of the Agency's sound 18 discretion." Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And whether or not to issue sanctions was a 21 matter of discretion before the acting director who</p>

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<p style="text-align: right;">Page 205</p> <p>1 wrote the Asperger letter, correct?</p> <p>2 A. I'm sorry. Repeat the question. I'm not</p> <p>3 sure I understood it.</p> <p>4 Q. Whether or not to issue sanctions, is it</p> <p>5 within the discretion of the acting director who</p> <p>6 issued the Asperger letter which we've been referring</p> <p>7 to? Is that correct?</p> <p>8 A. That's correct. That was within his</p> <p>9 authority.</p> <p>10 Q. Okay. And he found a technical violation</p> <p>11 but did not impose sanctions?</p> <p>12 A. Well, he issued a notice of violation which</p> <p>13 is a sanction.</p> <p>14 Q. Okay. But he didn't apply any remedial</p> <p>15 sanction, did he?</p> <p>16 A. Well, they had -- I wouldn't say he didn't</p> <p>17 apply remedial sanctions. I think because the</p> <p>18 applicants had to join in, the two missing</p> <p>19 applicants -- I think the two missing applicants had</p> <p>20 to do that and I think he saw that as being on the</p> <p>21 road to being accomplished. And that was part of the</p>	<p style="text-align: right;">Page 207</p> <p>1 that organization. He had responsibility in that</p> <p>2 office for licensing. And so a question of compliance</p> <p>3 on that type of matter would have come to him and he</p> <p>4 had the discretion to do that.</p> <p>5 Today as I say, there have been some changes</p> <p>6 in terms of how and where the enforcement authority</p> <p>7 would be carried out. So I can't say necessarily that</p> <p>8 it would have been -- that it would be the current</p> <p>9 director of the nuclear reactor regulation to do so.</p> <p>10 Q. Well, regardless of the title of the</p> <p>11 official, is your statement in Paragraph 24 that the</p> <p>12 NRC's choice of sanctions is quintessentially a matter</p> <p>13 of the Agency's sound discretion a true statement</p> <p>14 today?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your opinion that if TVA had completed</p> <p>17 the closing of this transaction and transferred the</p> <p>18 site to Nuclear Development by deed, that that in and</p> <p>19 of itself would have violated the construction permit</p> <p>20 even where the maintenance and security and records</p> <p>21 management requirements were being maintained?</p>
<p style="text-align: right;">Page 206</p> <p>1 reason that he just issued the notice of violation.</p> <p>2 He did not impose civil penalty authority or</p> <p>3 impose civil penalty on it. He issued a notice of</p> <p>4 violation which is within the realm or the panoply of</p> <p>5 sanctions that the Agency can impose.</p> <p>6 Q. And he had that discretion at that time. Is</p> <p>7 that correct?</p> <p>8 A. Yes. He had the discretion because he was</p> <p>9 assigned the responsibility to respond to that</p> <p>10 petition for action, which is what he did in that</p> <p>11 letter.</p> <p>12 Q. And an acting director of reactor</p> <p>13 regulation, I'm not sure I have the title right --</p> <p>14 today has the same discretion, correct?</p> <p>15 A. Well, the assignment of responsibility may</p> <p>16 be differently -- we had some discussion of that this</p> <p>17 morning in terms of sanctions. But basically a senior</p> <p>18 official, and Mr. Case was a senior official, he was</p> <p>19 acting in that position and still the permanent</p> <p>20 director who, Harold Denton was assigned to that</p> <p>21 position. So -- but he was basically at the top of</p>	<p style="text-align: right;">Page 208</p> <p>1 A. Yes.</p> <p>2 MR. LEMBKE: Object to the form as to</p> <p>3 vagueness. Maintained by whom?</p> <p>4 MR. O'REAR: By either party. That they</p> <p>5 were -- that there was compliance by either party</p> <p>6 regarding maintenance, security and records</p> <p>7 management.</p> <p>8 BY MR. O'REAR:</p> <p>9 Q. My question is: Under that set of</p> <p>10 circumstances, would the transfer itself by deed from</p> <p>11 TVA to Nuclear Development violate the construction</p> <p>12 permit?</p> <p>13 A. Yes, I believe it would. I think that my</p> <p>14 report speaks to that.</p> <p>15 Q. And what harm would there be? What harm</p> <p>16 would there be to the public or to the workers or to</p> <p>17 the environment if that were to occur?</p> <p>18 MR. LEMBKE: Well, I object. That's a</p> <p>19 compound question and calls for speculation.</p> <p>20 BY MR. O'REAR:</p> <p>21 Q. What harm would there be to the public?</p>

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1 MR. LEMBKE: Objection, calls for 2 speculation. 3 BY MR. O'REAR: 4 Q. What harm would there be to the public if 5 all the requirements for the construction permit were 6 being adhered to and TVA deeded the site to Nuclear 7 Development? 8 MR. LEMBKE: Well, I object to the form. 9 Calls for speculation and if adhered to by TVA or by 10 Nuclear Development? 11 MR. O'REAR: One or both -- both parties. 12 THE WITNESS: I think as I've explained in 13 my report, the harm is that basically it undermines 14 the regulatory authority of the NRC in terms of the 15 longstanding and typical contract for how that is -- 16 that is managed under the construction permit. 17 As I indicated, my belief is the 18 construction permit speaks to ownership by the United 19 States of the site itself. That has -- is nothing -- 20 Mr. Repka's described it as a historical point of fact 21 but it has something more than that. Because it's	1 is there to the public? 2 MR. LEMBKE: Objection, calls for 3 speculation. 4 BY MR. O'REAR: 5 Q. Can you answer? 6 A. Well, you'll have to repeat the question. 7 What harm to the public? 8 Q. The question is: If the conditions of the 9 construction permit are being maintained and adhered 10 to, what harm is there to the public to transfer the 11 site from TVA to Nuclear Development? 12 MR. LEMBKE: Objection to the form, calls 13 for speculation and is unclear as to who is 14 maintaining the permit. 15 MR. O'REAR: I said either party or both. 16 But that the conditions of the permit are being 17 satisfied and followed. 18 THE WITNESS: Well, I return to my prior 19 answer. 20 Again, it undermines basically the NRC's 21 jurisdiction. It's not clear to me, you know, in
1 part related to some of the reviews of the Agency with 2 respect to control of the site and those types of 3 things for purposes of part 100. 4 It also -- this is where I speak to the 5 bifurcation of control. So you've got a licensee in 6 terms of TVA as a construction permit holder who no 7 longer actually has title to the land or has legal 8 authority to go onto to land. And then you have 9 Nuclear Development who is not a licensee of the NRC, 10 who makes a promise that it won't do anything on a 11 site that it otherwise governed by the NRC. 12 And so, from my standpoint that sort of 13 blows away the normal construction that we have of 14 regulatory jurisdiction in a stepwise regulatory 15 process that we have in a situation. That's my 16 problem. 17 Q. Okay. But that didn't answer my question. 18 What harm is that to the public? 19 A. The harm to the public is undermining the 20 NRC's regulatory authority. 21 Q. What -- what risk of harm in terms of safety	1 terms of what the NRC's ability to get on the site, 2 who's taking care of it, if Nuclear Development as 3 basically a non-licensee, if it's taking care of the 4 maintenance documentation, preservation requirements. 5 It's not clear what basis there is for that or sort of 6 oversight. 7 So again, what I emphasize, it creates a 8 bifurcated situation. And that is really inconsistent 9 with longstanding NRC practice. 10 BY MR. O'REAR: 11 Q. I don't think you ever answered what harm 12 there is to the public. 13 A. I said the harm to the public is undermining 14 the NRC's jurisdictional authority and regulatory 15 imprint on the site. That's the harm to the public. 16 Q. That's the type of harm? 17 A. It is a vague idea and concept, and I look 18 at that in terms of public policy. And that's the 19 harm, from my standpoint, from a public policy 20 standpoint. 21 Q. So you're not talking about harm to the

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<p style="text-align: right;">Page 213</p> <p>1 public in the sense of physical harm or exposure to 2 radioactivity or any kind of threat to the security 3 and safety of members of the public. You're referring 4 to some sort of amorphous of harm to the public that 5 undermines confidence in the NRC, or something like 6 that?</p> <p>7 MR. LEMBKE: Same objection.</p> <p>8 THE WITNESS: It undermines the authority.</p> <p>9 And it's not a question so much of confidence in the 10 NRC, it's the authority of the NRC.</p> <p>11 And what I don't know given the bifurcated 12 process or circumstances created, what is the 13 occurrence that I -- what is the assurance that the 14 NRC has with respect to the maintenance and fidelity 15 of those requirements up through it?</p> <p>16 So yes, is there -- because, again, we don't 17 have an operating reactor and it -- we don't have a 18 circumstance where you have the risk -- immediate risk 19 of potential unsafe operation or a radioactive 20 release, but you still need the control from the NRC 21 at the outset over these activities.</p>	<p style="text-align: right;">Page 215</p> <p>1 this, you do that, we'll all sort of make it good and 2 we promise not to do anything.</p> <p>3 Well, you do that, you're supposed to have a 4 license.</p> <p>5 Q. You seem to make light of this promise, that 6 it was a representation in an application that they 7 would not conduct any licensing activities until the 8 permits were issued, right?</p> <p>9 A. That's my understanding.</p> <p>10 Q. And you seem to characterize this with 11 quotation marks as some sort of unenforceable promise. 12 Is that what you're doing?</p> <p>13 A. Well, I'm saying is it's not clear to me 14 exactly what that promise is. But it also -- what 15 it's saying is that if you're otherwise supposed to 16 have the permit, you ought to have the permit. That's 17 what I'm saying.</p> <p>18 Q. All right.</p> <p>19 A. And that is well described in the expert 20 report. The NRC has not typically relied on this sort 21 of hair splitting of jurisdiction, assertion of</p>
<p style="text-align: right;">Page 214</p> <p>1 BY MR. O'REAR:</p> <p>2 Q. Well, what makes you think the NRC would 3 lose control if the site were transferred? It still 4 has control over TVA as the licensee and it still has 5 control over Nuclear Development as the applicant. So 6 what loss of control would there be by the NRC?</p> <p>7 MR. LEMBKE: I object to the form, lack of 8 foundation for that question.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: I think the NRC -- again, it's 11 a question of what the ongoing interaction between 12 Nuclear Development and TVA. But it's also -- the NRC 13 now, it can walk on that site anytime it wants.</p> <p>14 It's not clear to me that that's the case 15 under the circumstances -- the circumstances we're 16 describing here. And the fact of the matter is it 17 relies on the NRC having to potentially take action 18 that it would not otherwise need to take in order to 19 order to exert that regulatory control.</p> <p>20 And the fact of the matter it's tied to it.</p> <p>21 If -- we have not experienced sort of, oh, you do</p>	<p style="text-align: right;">Page 216</p> <p>1 jurisdictional authority.</p> <p>2 Oh, this one is an applicant, and so it can 3 do a certain amount of things and we'll take care of 4 it that way.</p> <p>5 Oh, this one is still the licensee 6 responsible, so we'll hold them responsible.</p> <p>7 It's just historically, that isn't 8 happening. It's not something I would advise the 9 Commission to do.</p> <p>10 Q. Well, I move to strike that.</p> <p>11 You're not there now. Have you communicated 12 these ideas to the NRC?</p> <p>13 A. No, I have not spoken to anyone at the NRC.</p> <p>14 Q. And when you keep referring to this promise, 15 aren't you overlooking the very section that gives the 16 NRC jurisdiction over Nuclear Development as an 17 applicant under 10 CFR 50.2?</p> <p>18 A. No, I don't think I'm overlooking that.</p> <p>19 Because that provision goes towards -- the provision I 20 think you're referring to, again -- let's pull it out.</p> <p>21 MR. LEMBKE: Caine, I think you meant to say</p>

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1 50.5 didn't you?	1 So that's why in this circumstance -- again,
2 MR. O'REAR: I did. 50.5.	2 with Nuclear Development not having the permit, you
3 THE WITNESS: The provision in 50.5?	3 know, having the site, it creates as I say this
4 Okay. I've reread it.	4 bifurcated situation which is not historically what
5 So again, what this recites is -- we're	5 the NRC likes to do.
6 going to -- from the NRC's perspective, you either as	6 MR. O'REAR: Let's take a five-minute break,
7 an applicant, you need to conform, you need to be	7 now. Is that okay with everybody?
8 honest in your application. You can't misrepresent	8 MR. LEMBKE: Yes.
9 things.	9 (Whereupon, a recess ensued.)
10 You as a licensee have to con- -- you have	10 MR. O'REAR: Back on the record.
11 to be honest and you have to conform to the activity	11 BY MR. O'REAR:
12 of your license. And if they're deliberate, there's	12 Q. Mr. Burns, do you agree that the
13 deliberate misconduct, you're subject to sanctions for	13 construction permit issued to TVA gives TVA the right
14 that.	14 to construct on the site identified in the permit?
15 And it also says in effect if you're	15 A. Yes, I agree.
16 unlicensed but should be, which is like the situation	16 Q. Do you agree that the construction permits
17 here, we can come and take action.	17 themselves do not confer ownership of the site to TVA?
18 What I'm saying is my view is, yeah, NRC has	18 A. Well, I think the permit describes ownership
19 its authority but it doesn't structure its regulatory	19 as in the United States. The particular provision on
20 programs. So, we'll do a little bit of this and a	20 it.
21 little bit of that, and we'll try to figure it out.	21 Q. Well --
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1 It has traditionally looked at the construction permit	Page 220
2 as something you have to have before you do anything.	1 A. I don't know.
3 Q. Okay. If TVA were to transfer the plant	2 Q. -- the permit does not confer ownership,
4 site to Nuclear Development now, do you really have	3 does it?
5 any question that the NRC would not have access to the	4 A. Well, I guess no. The permit does not
6 site?	5 confer ownership in the sense it's not a conveyance
7 A. I don't know. Again, I mean, you know, I	6 of -- it's not a property -- real property
8 presume it's in Nuclear Development's interest but	7 transaction.
9 there -- what I would normally call, you know, the	8 Q. Has the NRC ever issued construction permit
10 footprint is not necessarily there as yet.	9 to licensees who were not owners of the site where the
11 Q. So are you referring to some theoretical	10 construction was to occur?
12 defiance by Nuclear Development of NRC's right to	11 A. I am not aware of any. The only caveat I
13 access the site as being the problem here and the	12 would add here is that consistent with, for example,
14 basis for your opinion?	13 the Marble Hill decision and ongoing practice, you
15 A. Well, that informs my opinion when I say	14 know, co-licensees who must be on the license but who
16 some theoretical basis. We don't regulate on the	15 may not be the ones who are actually conducting the
17 basis of everybody doing what they're supposed to be	16 construction or opening the operation, that may be the
18 doing.	17 case with them.
19 Sometimes what have to think of as	18 Q. Okay.
20 regulators, what's the consequence of not following	19 A. I haven't looked at a particular permit in
21 the guidelines?	20 some time.
	21 Q. So the NRC has issued construction permits

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1 to persons who would be performing the construction, 2 who are not owners of the site where the construction 3 is still occurring, correct? 4 A. I don't think that's what I said. 5 Q. I thought that's what you said. 6 A. No, what I said is that the permits have 7 been issued to the owners, co-owner and one, for 8 example, who is particularly authorized or has that 9 property. But what I said was -- the additional 10 comment I made was you may have co-owners who 11 eventually are interested in taking the benefit of the 12 electricity production and then consistent with Marble 13 Hill and such other decisions, they must be 14 co-licensees on the permit but they may not be ones 15 who have ownership of the license itself. 16 Q. Are you aware of any situation where 17 construction permits have been issued and the owners 18 of the property were not co-licensees? 19 A. Not particularly, no. I'm not aware of 20 anything in particular. 21 Q. Does the NRC routinely issue operating	1 BY MR. O'REAR: 2 Q. I think you're moving away from the mic of 3 something. I don't know if anybody else is 4 experiencing that. Okay. 5 Are you saying that there are no instances 6 where the NRC has granted an operating license to an 7 entity that is not the owner of a nuclear plant being 8 operated? 9 MR. LEMBKE: Objection, asked and answered. 10 THE WITNESS: And my answer is, I am not 11 aware of any offhand. 12 BY MR. O'REAR: 13 Q. Let's look at the Marble Hill case for a 14 minute. 15 A. Okay. 16 Q. It's Exhibit 125. Should be in your stack 17 there. 18 A. Yes, I've got it. I've got it. 19 Q. Just to be clear for anyone who looks at 20 this or a Court who looks at it, the opinion is issued 21 by The Atomic Safety and Licensing Appeal Board,
1 licenses to parties who are not owners of the nuclear 2 plant? 3 A. No, the license is issued to the owner. 4 There may be authorization for someone to contract to 5 conduct the actual operation. 6 An example I would give -- an example I 7 would give, I believe for example, the Cooper -- 8 Plant, Exelon Corporation has basically managed 9 operation -- the operations as a contractor to -- in 10 Nebraska, a public co-op or whatever it is. 11 Q. Does Exelon -- does Exelon hold the 12 operating license for that plant? 13 A. I don't believe it holds an operating 14 license. I believe what it does is it holds -- it is 15 licensed, it is authorized to conduct those operations 16 on behalf of the owner. 17 Q. Okay. 18 A. You're breaking up on me. 19 MR. O'REAR: Can the court reporter 20 understand the witness? 21 THE REPORTER: Yes, I understood him.	1 correct? 2 A. That's correct. 3 Q. And that would be three administrative law 4 judges who are within the NRC, correct? 5 A. That's correct. The appeal board existed 6 from about 1969 to 1991 as an intermediate appellate 7 level in the NRC's adjudicatory system or 8 administrative hearing system. So they would hear 9 appeals. They did not hear original -- like the trial 10 level, which was the licensing board which we 11 discussed earlier. 12 So they would decide appeals and then there 13 was in effect like for lack of a better term a 14 certiorari type review by the Commission at its 15 discretion of the appeal board. 16 Q. And so the appeal board, it's between the 17 trial level and the Commission level, correct? 18 A. Correct. 19 Q. Okay. And so a decision of the appeal board 20 would not be considered a decision of the Commission 21 or the commissioners of the NRC, correct?

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1 A. Well, it is not a decision of the 2 commissioners but it was considered precedent within 3 the Agency.	1 Q. And just to clarify it, the Seabrook case 2 was a decision by what body?
4 Q. Okay. And again, this is all within the 5 administrative process, not -- not a court of law, 6 correct?	3 A. As I recall it was a decision by the 4 Commission itself.
7 A. That's correct. This is part of the NRC's 8 administrative hearing processes.	5 Q. But it was an administrative appeal. It's 6 not a court case. Is that correct?
9 Q. Do you agree that the sole question in this 10 case is whether co-owners of a site must be 11 co-licensees under a construction permit when it was 12 issued?	7 A. No, it's an final decision of the -- of the 8 Commission in an adjudication. I don't recall whether 9 that particular case at that point in time was 10 appealed to the court of appeals.
13 A. Well, that was a major issue. I don't 14 recall without going back and reading the decision 15 again whether it's some other issue that -- that was 16 decided.	11 Q. Well, you certainly would have cited that if 12 it were, wouldn't you, in your research? You would 13 have cited the court of appeals decision if it went to 14 the court of appeals, would you not?
17 There were more issues I remember in Marble 18 Hill involving the boundary dispute between the 19 Commonwealth of Kentucky and the State of Indiana 20 which wound up going -- it was one of those original 21 jurisdictions in the cases in the Supreme Court.	15 A. Yes, I would have.
1 It may be that that -- what -- but I don't 2 recall without going back and reading it.	16 Q. Okay. You didn't cite a court of appeals 17 decision in Seabrook, did you?
3 Q. The Marble Hill case did not involve a 4 transfer of ownership situation, did it?	18 A. As I recall I did not.
5 A. Well, it did not -- in terms of, only in the 6 sense that it didn't -- we'll say the circumstance 7 where you have an existing licensee and it's being 8 transferred to another licensee. It is in my view 9 related to transfers from the standpoint, do you need 10 to be on the construction permit as a co-owner, 11 co-licensee? So at some point there's a 12 transaction -- you know, a transaction.	19 Q. And in that case the appeal panel held that 20 the financial qualifications of the future owner of a 21 site would be reviewed by the NRC in connection with
13 Q. Marble Hill did not involve a question of 14 whether a site can be transferred before a 15 construction permit is issued to transferee, did it?	1 the future approval of a license, correct?
16 A. The specific scenario, no. But I believe it 17 is germane to that question.	2 A. The amendment I would make to your statement 3 and then I would generally agree with it is that was a 4 decision of the Commission, not of the appeal panel.
18 Q. Now, you mentioned in your testimony the 19 Seabrook case. That was referenced in the Marble Hill 20 case?	5 Q. Okay. Pardon me.
21 A. Yes, I believe it was.	6 A. There may have been an appeal from the lower 7 -- a lower tribune.
	8 Q. Okay. And aren't the financial 9 qualifications of Nuclear Development being reviewed 10 by the NRC prior to the issuance of any construction 11 permit to Nuclear Development?
	12 A. They would have to be -- yes, they would 13 have to be reviewed prior to authorization for 14 transfer.
	15 Q. So there's nothing about Seabrook that's 16 inconsistent with what's going on here, is there?
	17 A. Well, in Seabrook -- what happened in Sea 18 Brook you had the interveners or those against 19 Seabrook who, as I recall it, were making an appeal 20 and said some stated -- that there was some stated 21 possibility that certain other, I think small co-ops

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1 or small utilities would join in on the Seabrook plant 2 and they wanted action by the Commission at that point 3 in time. At that point in time they finally raise 4 their appeal, and that's what the Commission rejected. 5 It said, we'll deal with that when the time comes. 6 And the assurance that the Commission was 7 giving, I think, to the interveners who appealed was, 8 you have to have the NRC's approval to be on that 9 construction permit and to be a part of that project. 10 And that's what they're saying and that's 11 what it was cited for in Marble Hill and that's why I 12 referenced -- I referenced it and probably referenced 13 it in the context of Marble Hill. 14 Q. Let me direct your attention to Exhibit 124, 15 which is the Asperger letter and -- 16 MR. LEMBKE: Hold on. Let me find it. 17 BY MR. O'REAR: 18 Q. You got it there? 19 A. Yes, I do. 20 Q. You're familiar with it, right? 21 A. Yes, I am.	1 A. Yes. 2 Q. Now, he's a private party, obviously. Who 3 was Asperger? 4 A. He is -- I recall him from reading some 5 other decisions of the Agency related to that time. 6 Basically he was a guy who was against the nuclear 7 power plant and lived up I forget -- he was in 8 Midland, Michigan by where the plant was being built. 9 But that's what it was. 10 So, under the NEC's rules which were adopted 11 I believe in 1974 by the Atomic Energy Commission, the 12 Agency provided a -- in 10 CFR 2.206 it provided for 13 any person to file a petition with the Agency asking 14 for enforcement action. So that's what this was. 15 So Dr. Asperger, I think the only connection 16 with the, I think Detroit -- the Detroit Edison plant 17 in question here was he didn't like them. So he was 18 asking for enforcement action against Detroit Edison 19 and others. 20 Q. The Detroit Edison plant site involved here 21 was the Enrico Fermi plant?
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1 Q. And you cited it in your report, correct? 2 A. That is correct. 3 Q. The date, it seems to be a little obscured 4 in the exhibit. Do you know the date of the letter? 5 A. Yes, I think I determined -- and I think I 6 listed it in my report, and I think it's something 7 like March 6, 1978. I forget exactly, it's at the 8 back of my report, the exhibits to the report. 9 March 3rd, 1968. 10 Q. And this is when you referred to Mr. Case 11 earlier, this is the person who signed the letter, 12 last page of the exhibit, Ed G. Case? 13 A. Correct. 14 Q. Acting director Office of Nuclear Reactor 15 Regulation? 16 A. Correct. 17 Q. And the letter's addressed to a Dr. Robert 18 Dr. Asperger, correct? 19 A. Correct. 20 Q. Hence, that's why you're calling it the 21 Asperger letter, right?	1 A. Got it. 2 Q. And if there's been reference in other 3 correspondence or other documents in this case to the 4 Fermi letter or the Fermi decision, is that a 5 reference to this letter as far as you know? 6 MR. LEMBKE: I'm going to object to the 7 form. How could he possibly have the foundation to 8 answer that? 9 MR. O'REAR: Okay. Well -- 10 BY MR. O'REAR: 11 Q. Are you aware of any other authority that's 12 been relied on by TVA or by you called Fermi that's 13 something other than this letter? 14 A. I don't see any that are listed in my 15 exhibit. 16 As I say -- I said a couple minutes ago, I 17 believed I looked at a couple of decisions related to 18 the Fermi -- to Fermi. There were some, I think, 19 district court actions, there were probably some other 20 NRC things but they were -- they didn't really go to 21 the issues that are described in Mr. Case's letter to

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1 Dr. Asperger.	1 utilization facility under construction is a right to
2 Q. Okay. Let me direct your attention, then, to	2 own a utilization facility if completed." Did I read
3 Page 4 of this exhibit, and the footnote on Page 4.	3 that correctly?
4 A. Yes, I got it.	4 A. I believe so.
5 Q. And before I ask this question, though.	5 Q. So he three times refers to a utilization
6 So Dr. Asperger was just a member of the	6 facility under construction, correct?
7 public who complained about something regarding this	7 A. He refers to a utilization facility under
8 plant, correct?	8 construction.
9 A. Yes.	9 Q. So his premise and the starting point for
10 Q. He was not a licensee or an owner or	10 what he's addressing and for what he's responding to
11 involved in any transaction related to the plant, was	11 assumes this is a utilization facility, and that it is
12 he?	12 under construction because he said it three times
13 A. No. He was, as they say, a third party	13 there, right?
14 raising a complaint about Detroit Edison.	14 A. Yes.
15 Q. Okay. And Mr. Case -- Mr. Case in this	15 Q. Okay. And so what he's saying in this
16 footnote -- do you have it before you?	16 footnote is that if a facility is far enough along in
17 A. Yes, I do.	17 its construction to be considered a utilization
18 Q. I'm going to read the first sentence. It	18 facility, then we will consider it a utilization
19 says, "We disagree with the argument that Section 101	19 facility, even though it is not complete. Isn't that
20 of the Act has not been violated because interest in a	20 exactly what he's saying?
21 utilization facility under construction has been	21 MR. LEMBKE: Object to the form, lack of
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1 acquired rather than an interest in a completed	1 foundation. That is not exactly what he's saying.
2 utilization facility."	2 BY MR. O'REAR:
3 Okay. The argument, then, he's referring to	3 Q. Isn't that -- I mean, you've relied on this
4 is an argument of a utilization facility under	4 letter. I'm asking you about the letter. Isn't that
5 construction as opposed to a completed utilization	5 what the letter says?
6 facility, right?	6 MR. LEMBKE: No. You're engaging in wishful
7 A. Say that again, please.	7 thinking as to what the letter says.
8 Q. The point that Mr. Case is responding to is	8 MR. O'REAR: That's not an objection, Matt.
9 just what is stated there in the first sentence, "We	9 MR. LEMBKE: Object, lack of foundation.
10 disagree with the argument that Section 101 of the Act	10 I'm responding to your comment.
11 has not before we violated because an interest in a	11 MR. O'REAR: Okay. Well --
12 utilization facility under construction has been	12 BY MR. O'REAR:
13 acquired rather than an interest in a completed	13 Q. Isn't that what Mr. Case is saying in this
14 utilization facility." Right, that was the issue he	14 letter?
15 was addressing in this footnote?	15 A. I don't believe so. Because, again, I look
16 A. That -- well, partly.	16 at the last sentence, sentence or two in the footnote
17 Q. And then he says in the last part of the	17 and it says one under construction is a utilization
18 footnote, "Moreover it has been the longstanding	18 facility. And that's how we have traditionally
19 practice of the Commission to consider a utilization	19 considered it.
20 facility under construction to be a utilization	20 Q. He says a utilization facility under
21 facility. Therefore in our view, a right to own a	21 construction, is a right to own a utilization facility

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<p>1 if complete.</p> <p>2 So what he's saying there is if it's a</p> <p>3 utilization facility that is not complete but has</p> <p>4 reached the point in construction to be a utilization</p> <p>5 facility, then it is still a utilization facility.</p> <p>6 Isn't that exactly what he's saying?</p> <p>7 MR. LEMBKE: Now, I object again to lack of</p> <p>8 foundation, "that's exactly what he's saying."</p> <p>9 BY MR. O'REAR:</p> <p>10 Q. Isn't that a reasonable and accurate</p> <p>11 interpretation of this letter?</p> <p>12 A. Again, the interpretation that it has to be</p> <p>13 capable of operation?</p> <p>14 Q. The interpretation -- I'm not interpreting.</p> <p>15 I'm just saying what he says there. He says, "It is a</p> <p>16 utilization facility under construction." He does not</p> <p>17 say it is a site or that a site that has not reached</p> <p>18 the point of being a utilization facility is</p> <p>19 considered a utilization facility.</p> <p>20 MR. LEMBKE: I move to strike that. That's</p> <p>21 a statement, not a question.</p>	<p>Page 237</p> <p>1 utilization facility under construction, doesn't it.</p> <p>2 A. I'm not sure I understand the difference</p> <p>3 between our -- the semantic difference between what</p> <p>4 you're saying and what I'm saying.</p> <p>5 Q. I'm saying that the decision means that if a</p> <p>6 plant is far enough along in construction to be</p> <p>7 determined a utilization facility, we still deem a</p> <p>8 utilization facility even though it is not fully</p> <p>9 complete. Isn't that what is said by this footnote?</p> <p>10 A. Yes. He's saying one under construction is</p> <p>11 a utilization facility.</p> <p>12 Q. You keep saying one. I don't see the</p> <p>13 word "one" there. I see the words "utilization</p> <p>14 facility under construction." I'm sorry.</p> <p>15 A. -- speak to the level or the extent of</p> <p>16 completion of the facility.</p> <p>17 Q. Are you saying that this letter stands for</p> <p>18 the proposition that at any degree of construction</p> <p>19 such as the example I posed earlier in the deposition,</p> <p>20 of laying the concrete pad in the initial pact of</p> <p>21 construction creates the utilization facility, and</p>
<p>1 MR. O'REAR: Well, that was a question.</p> <p>2 MR. LEMBKE: I don't know what the question</p> <p>3 is.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Doesn't it say that?</p> <p>6 MR. LEMBKE: Same objection, lack of</p> <p>7 foundation, misstates the evidence.</p> <p>8 THE WITNESS: Well, I think I disagree</p> <p>9 because, again, I read the last -- his penultimate</p> <p>10 sentence and one under construction is considered to</p> <p>11 be a utilization facility.</p> <p>12 BY MR. O'REAR:</p> <p>13 Q. Where does it say one under construction?</p> <p>14 Where does it say that?</p> <p>15 A. A utilization -- it says, in the first</p> <p>16 sentence of the second sentence. "A utilization</p> <p>17 facility under construction to be a utilization</p> <p>18 facility."</p> <p>19 BY MR. O'REAR:</p> <p>20 Q. That's exactly what I read.</p> <p>21 You said one under construction. It says a</p>	<p>Page 238</p> <p>1 that's what Mr. Case meant by this footnote?</p> <p>2 A. I think what Mr. Case meant is if you're</p> <p>3 going to be part of the ownership, you got to be</p> <p>4 licensed. That's what he's saying.</p> <p>5 Q. Okay. Well, he doesn't say that, does he?</p> <p>6 A. Well, I think he does. He finds in effect</p> <p>7 that the applicant -- you know, the co-applicants who</p> <p>8 are not on the license yet, that's the basis for him</p> <p>9 fining for noncompliance.</p> <p>10 Q. Okay. Well, Nuclear Development is on the</p> <p>11 application, correct?</p> <p>12 A. Well, they have applied for a transfer of a</p> <p>13 construction permit, that's correct.</p> <p>14 Q. To your knowledge, are there any co-parties</p> <p>15 with Nuclear Development that are not on the</p> <p>16 application that will be involved in the construction</p> <p>17 of the site?</p> <p>18 A. You'll have to repeat the question.</p> <p>19 Q. In our case are you aware of any parties</p> <p>20 other than Nuclear Development that would need to be</p> <p>21 on the application because they would need to be</p>

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1 licensed in addition to Nuclear Development to 2 construct on the site? 3 A. I'm not aware. Nuclear Development would 4 meet, and based on my review of some of the 5 application and some of the back and forth with the 6 NRC staff on it, there are, you know, certain 7 contractors and things like that, when I say I use the 8 word "approve" lightly or broadly, that they would 9 need to be approved in the sense that the NRC would 10 need to accept the -- going forward, the processes 11 were -- the structure for things like quality 12 assurance program and all that, which I know would be 13 by contract. 14 Q. But our case, as you understand it, does not 15 involve an issue of co-owners or co-licensees, does 16 it? 17 A. Well, no. The transfer is from TVA to 18 Nuclear Development as a new authorized permit holder. 19 Q. If you would now look at the Zimmer decision 20 which should be in your stack. It's Exhibit 132. 21 A. Yeah.	1 A. I'd have to find it. Yes. Yes, I see it 2 now. 3 Q. And it says there, the third line from the 4 bottom on the first page, "Only the NRC staff 5 responded to this motion in its April 9, 1984 6 response. Staff points out that Section 11CC of the 7 Atomic Energy Act defines a utilization facility as, 8 'One which is capable of making use of special nuclear 9 material.'" Correct? 10 A. Yes, it says that. 11 Q. And that expresses, then, the NRC staff's 12 view of the definition of utilization facility, 13 correct? 14 MR. LEMBKE: Objection, lack of foundation. 15 BY MR. O'REAR: 16 Q. Well, when you speak of all this wholistic 17 precedent within the NRC based on interpretations by 18 staff, this case shows that staff interpreted and used 19 the statutory definition being one capable of making 20 use of special nuclear material. Is that correct? 21 MR. LEMBKE: Same objection.
1 (Burns Exhibit No. 132 was marked for 2 identification.) 3 BY MR. O'REAR: 4 Q. All right. 5 A. I have it. 6 Q. Pardon me just give a minute, please. 7 Do you agree that this Zimmer decision 8 stands for the proposition that a plant that was once 9 a utilization facility can be converted to something 10 that is not a utilization facility by disabling it so 11 that it cannot make use of special nuclear material? 12 A. I would agree that the decision deals with 13 assuring that a utilization facility is no longer 14 capable or put in a condition such that it would not 15 be capable of that use so that the NRC can walk away 16 from it. 17 Q. And in analyzing whether this -- such a 18 applicant plant would be a utilization facility, the 19 staff, as adopted by this licensing board decision, 20 cited the statutory definition under the Atomic Energy 21 Act of a utilization facility, is that correct?	1 THE WITNESS: Well, I agree according to the 2 licensing board that they referenced the definitional 3 section within the Atomic Energy Act. And the reason 4 for that that in this case you have the Zimmer plant 5 which is extraordinarily far along; it has fuel on the 6 site and the board's decision says it was in the 7 condition that it basically needed to be undone. And 8 it goes again, to this -- this is not a conflict with 9 Marble Hill, this not a conflict with the Asperger 10 letter. This basically is a reflection of the 11 circumstances before the Agency at that time. 12 Cincinnati Gas and Electric threw in the 13 towel, decided not to proceed with operation of the 14 Zimmer plant. It was extraordinarily far along. So 15 what the NRC needed was assurances that you could walk 16 away, could walk away from the plant so it would not 17 be capable of sustaining a nuclear reaction and thus, 18 be inoperable utilization facility. And I think 19 that's what they did in this opinion. Those were the 20 conditions of basically letting Cincinnati Gas and 21 Electric turn in its licenses.

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<p style="text-align: right;">Page 245</p> <p>1 I don't even recall here, they may have even 2 had -- I'm not sure whether they had the operating 3 license yet or not or just still the CP. But they 4 obviously had some license to possess radioactive 5 material in the form of new fuel.</p> <p>6 Q. Well, what you've just said fully supports 7 Nuclear Development's position, doesn't it? I mean, 8 the Bellefonte plant is not capable of operation as a 9 nuclear reactor. It's not capable of using special 10 nuclear material, right?</p> <p>11 A. Not in its current condition. But what I 12 just said does not support the view of Nuclear 13 Development because, as I said before, what you have 14 here is this is the end game or the end state and is 15 deciding to put the facility into that end state.</p> <p>16 If you have a live -- the Zimmer, the 17 Cincinnati Gas and Electric plant has permits over -- 18 that are subject to NRC oversight with respect to the 19 Zimmer plant, which then did not go into operation.</p> <p>20 Again, what -- it's the permit that matters.</p> <p>21 Q. Well, sir, we will state and have stated</p>	<p style="text-align: right;">Page 247</p> <p>1 if those steps were taken, this plant would not be a 2 utilization facility. Is that correct?</p> <p>3 A. It accepted that for purposes of terminating 4 the NRC licenses subject -- that the plant was subject 5 to.</p> <p>6 Q. Okay. And why is that a distinction in this 7 case?</p> <p>8 A. I don't think it's a distinction. It's what 9 they did.</p> <p>10 Q. Why is it a distinction from our case?</p> <p>11 A. If you're talking about a distinction with 12 the Nuclear Development case, there's not intention 13 here of terminating the plant. It's basically keeping 14 this thing alive until the transfer can occur or a 15 transfer's approved and specific authorization, which 16 as I say I believe needs to be done concurrently, is 17 done. That's a wholly different circumstance than the 18 circumstance in which basically a licensee is 19 intending to withdraw itself from NRC jurisdiction.</p> <p>20 Q. Well, isn't a fact that before one thing 21 can be done at this plant by Nuclear Development, they</p>
<p style="text-align: right;">Page 246</p> <p>1 what Nuclear Development's position is.</p> <p>2 I'm asking you about the Zimmer case. The 3 Zimmer case focused on the operation or operability of 4 the plant in determining whether it was a utilization 5 facility, did it not?</p> <p>6 A. It focused on the question of operability 7 for purposes of terminating NRC jurisdiction and 8 terminating the permit that subjected the Cincinnati 9 Gas and Electric Company to NRC jurisdiction.</p> <p>10 Q. And this memorandum opinion states on the 11 first page, the applicant's representation that all 12 fuel would be removed in number one. And number two, 13 that the nuclear steam supply system would be modified 14 to prevent its operation as a utilization facility, 15 and that there was -- there would be severing and 16 welding caps on the two main feed water lines and four 17 main steam lines and removing the control rod drive 18 mechanism.</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. All right, sir. And the NRC accepted that</p>	<p style="text-align: right;">Page 248</p> <p>1 first have to obtain a construction permit from NRC 2 and then ultimately an operating license from NRC, 3 correct?</p> <p>4 MR. LEMBKE: Object to the vagueness of "one 5 thing."</p> <p>6 THE WITNESS: Well, certainly --</p> <p>7 BY MR. O'REAR:</p> <p>8 Q. Isn't a fact that they cannot conduct any 9 license activities on this site, even if they were to 10 own and possess it, until a construction permit is 11 issued by the NRC? And then they cannot operate until 12 a second license, an operating license is issued by 13 the NRC. Isn't that correct?</p> <p>14 A. Nuclear Development can do nothing with 15 respect to the Bellefonte plant without prior NRC 16 authorization, and ultimately it would have to seek an 17 operating license.</p> <p>18 And as my opinion indicated, I believe under 19 the circumstances here, the timing of that is 20 basically concurrent, the transfer of the title to the 21 land is concurrent with without authorization to</p>

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1 transfer the construction permit.	1 BY MR. O'REAR:
2 Q. Did you participate in the Zimmer opinion?	2 Q. Now, you were personally involved in this, I
3 A. No, the because at that time I would not	3 believe you said earlier in the deposition, correct?
4 have -- I participated in a number of matters,	4 A. I would have some awareness of it and some
5 probably the reason, one of those circumstances that	5 of the staff from the General Counsel's Office who
6 led to the abandonment of the project, which is again,	6 advised or were under my supervisor.
7 quality assurance problems.	7 I don't recall how -- I don't recall
8 But I was not counsel on this -- related to	8 specifically that, you know, I wrote on the -- or
9 this.	9 commented specifically. I was probably briefed on it
10 Q. Were you involved in the work on the	10 by my staff.
11 proposed rule for decommissioning plants by the NRC?	11 Q. Well, can you identify this letter as the
12 A. Only in the sense that as a commissioner I	12 letter from the NRC which terminated the construction
13 voted to instruct the staff to move toward development	13 permit at Bellefonte on September 14, 2006?
14 of such a rule.	14 A. Hold on. Hold on. Sorry. Yes, it looks
15 Q. And you were in favor of that rule, weren't	15 like an acknowledgement of the withdrawal of the
16 you?	16 permit.
17 A. I was in favor of the Agency creating a	17 Q. And it was effective September 14, 2006, the
18 decommissioning rule, because I thought it would be a	18 date of the letter, correct?
19 more efficient way of addressing the decommissioning	19 A. Yeah. It doesn't say a particular effective
20 process because the Agency had been issuing extensions	20 date. But I would agree that the date of the letter
21 which from a public relations standpoint, aren't	21 can be construed as the effective date.
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1 always the best thing.	1 Q. And then if you would look at the next
2 And also I think it provided -- more	2 exhibit, which should be 131, which is a one-page
3 importantly it provided greater stability to licensees	3 document dated at the top February 18, 2009.
4 who were entering the decommissioning process.	4 Burns Exhibit No 131 was marked for
5 Q. And the Zimmer case is cited favorably as in	5 identification.)
6 the proposed rule and its rationale's is adopted in	6 THE WITNESS: Yeah, I have that.
7 the proposed rule. Is that correct?	7 BY MR. O'REAR:
8 A. I frankly don't recall. I haven't looked at	8 Q. It's a memo from Mr. Bate?
9 the proposed rule -- I probably haven't looked at the	9 A. Right.
10 proposed rule since I voted on it before leaving the	10 MR. LEMBKE: I got lost. What document are
11 Commission.	11 we looking at?
12 Q. All right. We'll look at it in just a	12 MR. O'REAR: 131.
13 minute. I just wondered if you recalled that. Let's	13 MR. LEMBKE: Thank you.
14 move on to Exhibit 130, if we could.	14 BY MR. O'REAR:
15 A. Can you tell me the title of it?	15 Q. Tell me when you get it.
16 Q. Yes. Exhibit 130 is a letter dated at the	16 A. I'm all set.
17 top September 14, 2006 from Ms. Haney with the NRC to	17 Q. Okay. Are you familiar with this document?
18 Mr. Singer.	18 A. Yeah, I'm familiar will it.
19 A. I got it.	19 Q. In your research -- you did research on the
20 Burns Exhibit No. 130 was marked for	20 history of these this permits, didn't you? And you
21 identification.)	21 found in your research that they were terminated on

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1 September 14, 2006, and then reinstated sometime in	1 BY MR. O'REAR:
2 2009, correct?	2 Q. Okay. Mr. Burns, we've looked at two
3 A. Correct.	3 documents; Exhibit 130 and 131, which indicate that
4 Q. And then this Exhibit 131 may not be the	4 from the period of September 2006 through March of
5 actual reinstatement but it -- "The director of the	5 2009 there was no construction permit in existence at
6 NRR is authorized to issue an order reinstating the	6 the Bellefonte site, is that correct?
7 construction permit for Bellefonte Units One and two,	7 A. That's correct.
8 placing the facility in terminated plant status." See	8 Q. And there was no operating license from the
9 that?	9 NRC to TVA during that period either, was there?
10 A. I do.	10 A. No, there was no operating license.
11 Q. Do you know the actual date that the	11 Q. And there never has been an operating
12 construction permits were reinstated in terminated	12 license issued on this plant, has there?
13 plant status?	13 A. No.
14 A. I believe actually, it's referenced in my	14 Q. Okay. All right. We had a double negative
15 report -- the main report, the initial report. I	15 there.
16 think it's Document 39 under this inventory of	16 Has there ever been an operating license
17 documents which references a Federal Register notice	17 issued on this plant?
18 dated March 13th, 2009. And that, you know, given the	18 A. No operating license has been issued for
19 timing here, I believe that and we've referenced it,	19 this plant.
20 that's the date when the director's order was issued.	20 Q. So for two and a half years TVA owned this
21 Q. Okay. Your audio is moving in and out on	21 grant -- the plant site, the real estate where there
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1 me. I don't know what the issue is.	1 was a partially completed facility there, not fully
2 A. Okay. I'm sorry.	2 constructed and TVA had no construction permit and had
3 Again, I'll reference it in Document Number	3 no operating license for two and a half years. Is
4 39 of my original report, which is a reference to a	4 that correct?
5 Federal Register notice published on March 13th, 2009.	5 A. That's correct.
6 So it was probably back two days before that	6 Q. And so NRC took the position at the time
7 because there's always a issuance of the Federal	7 that with respect to Bellefonte and the condition it
8 Register notice -- order was published in the Federal	8 was in at that time, no license was needed in order to
9 Register and then -- so active publish. So it was	9 -- for TVA to own the site, correct?
10 early March.	10 A. Correct. Because the NRC had determined
11 (The reporter requested clarification.)	11 that it could terminate its jurisdiction over the site
12 BY MR. O'REAR:	12 with TVA basically giving up the permit.
13 Q. Yes, it's hard for me to hear, too, Mr.	13 Q. Is it your opinion that the Bellefonte site
14 Burns. It's just your -- the audio is drifting in and	14 was a utilization facility during that two and a half
15 out.	15 year period?
16 MR. LEMBKE: You may want to sit back a	16 A. It was not -- it was not a utilization
17 little. You might be too close.	17 facility subject to NRC jurisdiction.
18 MR. O'REAR: Let's go off the record for a	18 This is really the situation as in Zimmer,
19 second.	19 where the license holder decides to turn in the
20 (Whereupon, a recess ensued.)	20 license and go away, and the NRC has looked at it from
21 MR. O'REAR: Back on the record.	21 the steps at that point that it was satisfied it could

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1 do that.	1 Q. First page of this letter says at the very
2 Q. All right. I want you to look at the next	2 beginning, "This letter requests NRC approval to
3 exhibit, and it is a letter from TVA to the NRC dated	3 withdraw of BLN." That's Bellefonte, right?
4 April the 6th, 2006.	4 A. I believe it is.
5 MR. LEMBKE: What's that exhibit number?	5 Q. "Permit in accordance with generic letter
6 MR. O'REAR: It's a blank. I need to fill	6 87-15 Policy Statement on deferred plant." So you see
7 it in. It'll be 206, 206.	7 that?
8 (Burns Exhibit No. 206 was marked for.)	8 A. Yes, I do.
9 MR. LEMBKE: And what's the date of the	9 Q. And do you see in the second paragraph where
10 letter?	10 there is the representation in the second sentence,
11 MR. O'REAR: April 6, 2006.	11 "There is no nuclear fuel located at the site and TVA
12 MR. LEMBKE: Okay.	12 has removed safeguards information."
13 BY MR. O'REAR:	13 A. Yes, I see that. Yes, I do.
14 Q. You have it there, Mr. Burns?	14 Q. And what is safeguards information?
15 A. I have it. Sorry.	15 A. It's a level of security information that
16 Q. Okay. Thank you.	16 was created specifically with respect to -- it's
17 Now, this letter's not on your Exhibit A, is	17 basically used by both the NRC and the Department of
18 it?	18 Energy. It's below what we would call classified
19 A. No.	19 information, but it's security related information is
20 Q. Was this letter considered by you in forming	20 the simple answer.
21 your opinions and preparing your report?	21 Q. And then in the third paragraph, do you see
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1 A. I may have read it but in the context of the	1 the reference to, "No quality related activities are
2 NRC's orders and Mrs. Haney's letter notification --	2 ongoing at the site?"
3 maybe I'm confusing the Haney letter, again.	3 A. I'm sorry. Which paragraph?
4 Q. Haney -- I'm sorry. You're referring to	4 Q. Third paragraph, second line in the middle
5 Catherine Haney?	5 of the sentence it says --
6 A. Yes, Cathy Haney, it's exhibit --	6 A. Yes, I do see that.
7 Q. I just want to make sure the record's clear	7 Q. "And no quality related activities are
8 we're not referring to Franklin Haney or Frank Haney,	8 ongoing at the site?"
9 our client.	9 A. Correct.
10 A. Oh, no.	10 Q. And so does that refer to activities that
11 Q. Okay.	11 are regulated and licensed by the NRC?
12 A. It's Exhibit 130.	12 A. Yes, that would refer to, I think it refers
13 Q. All right.	13 to the quality -- implementation, quality assurance
14 A. Cathy Haney or Catherine Haney.	14 and other programs that are necessary.
15 Q. All right. Well, let's look at this letter.	15 Q. Okay. And when this letter was written on
16 You may have considered but don't recall.	16 April the 6th, 2006, the construction permit was still
17 Is that a fair statement?	17 in effect, correct?
18 A. Yeah, I think that's a fair statement. I	18 A. That's correct.
19 may have read it, but I looked at particularly the	19 Q. Okay. Now, look at the letter from TVA to
20 NRC's orders, some of the orders or the Haney letter	20 the NRC dated June 29, 2006. It's not got an exhibit
21 with respect to termination probably more.	21 number on it yet.
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Page 261 1 A. Okay. I have that. 2 MR. O'REAR: Let's mark that as Exhibit 207. 3 (Burns Exhibit No. 207 was marked for 4 identification.) 5 THE WITNESS: Okay. 6 BY MR. O'REAR: 7 Q. And just for the record, the prior letter of 8 April 6th, 2006 is Exhibit 206, in case it didn't get 9 marked that way. 10 Okay. This letter says in the second 11 paragraph, "During a conference call with the NRC 12 project manager on June 21, 2006, TVA was asked to 13 provide additional information regarding whether the 14 subject BLN unit can be considered a 'utilization 15 facility' as defined by 10 CFR 50.2 as follows." Do 16 you see that? 17 A. Yes, I do. 18 Q. And this letter is from TVA, correct? 19 A. That's what it says. 20 Q. And TVA is required by law and required by 21 NRC regulation to provide true and correct information	Page 263 1 necessary structures, systems or components in place 2 to sustain a controlled nuclear reaction. For 3 example, over the past several years, heat components 4 such as the control rod drive mechanisms for both Unit 5 One and two have been removed from the site which 6 precludes the ability of the units to operate as 7 nuclear reactors. In addition as stated in TVA's 8 letter of April 6, 2006, there is no nuclear fuel 9 located at the BLN site." 10 Did I read that correctly? 11 A. Yes, that's what I read too. 12 Q. Got you. And when this letter was written 13 on June 29, 2006, the construction permits were still 14 in effect, correct? 15 A. Yes, they were. 16 Q. Now, why didn't you cite this letter in your 17 report? 18 A. I don't have a particular answer. I think 19 again, this situation speaks to the Zimmer situation 20 which is basically a licensee seeking to terminate its 21 -- the regulatory control exercised by the NRC over
Page 262 1 to the NRC. Is that correct? 2 A. That's correct. 3 Q. And the definition is this, utilization 4 facility means, "Any nuclear reactor other than one 5 designed or used primarily for the formation of 6 plutonium or U233." Do you see that? 7 A. Correct. 8 Q. That's the NRC definition of utilization 9 facility, right? 10 A. That's correct. 11 Q. And that's the definition you've used in 12 your report, right? 13 A. That's correct. 14 Q. Okay. Look at the next paragraph. I'm 15 going to read it. Make sure I read it correctly. "In 16 their present condition, neither of the subject units 17 can be considered a utilization facility as so 18 defined. At the time that the construction of the 19 units was deferred, TVA considered Unit One to be 20 88 percent complete and Unit Two to be 58 percent 21 completed. At this time neither reactor has the	Page 264 1 the construction permit and facilities that may be -- 2 that have or may be under construction at the site. 3 And that's what I think this speaks to. 4 Again, what ways is TVA assuring the NRC 5 that by giving up the construction permit, it's done 6 what it needs to do to assure that basically the 7 facilities at that time can be possessed without that 8 continuing NRC oversight, because they are not capable 9 of being put into operation. That's what I think it's 10 for. 11 Q. TVA said -- using the definition that you've 12 used for utilization facility, that this plant is not 13 a utilization facility, correct? 14 A. It's saying yes. It can be considered upon 15 termination, not to be -- in support of termination 16 that it's not a utilization facility. 17 Q. It doesn't say that. Let's -- 18 A. Well, I'm telling you how I read that 19 letter. Because, again, on these things you have to 20 look at the context in which it's presented. It's 21 context like the Zimmer context. This is not where

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1 you have an active construction permit that somebody	1 utilization facility on June 29, 2006?
2 wants and that basically is headed toward the	2 MR. LEMBKE: Well, I object, that misstates
3 potential operation.	3 his testimony.
4 Q. Okay. Let's looking at this sentence. It	4 BY MR. O'REAR:
5 says, "In their present condition, neither of the	5 Q. Was the plant in your opinion a utilization
6 subject units can be considered a utilization facility	6 facility on June the 29th, 2006?
7 as so defined." Do you see that?	7 A. It was not a facility capable of being put
8 A. Correct, I see that.	8 into operation which is the operative and significant
9 Q. Are you stating that TVA made a false	9 factor with respect to the circumstances in context
10 statement there?	10 addressed here.
11 A. No. TVA did not make a false statement.	11 Q. You have opined that the plant is a
12 What it's doing is, again, in the context of trying to	12 utilization facility, have you not?
13 withdraw from NRC's oversight and control of the	13 A. Correct.
14 Bellefonte units, it's basically saying this is not	14 Q. June 29, 2006, in your opinion, was the
15 the thing you're going to be concerned about that can	15 Bellefonte plant a utilization facility? Can you
16 be turned into operations at that time. And that's	16 answer that yes or no?
17 what they were doing, context is everything.	17 A. I think I've answered that.
18 Q. The letter said in present condition, dated	18 Q. I don't think you have. Can you answer yes
19 June 29, 2006. On that day neither of those units	19 or no, whether on June 29, 2006 the Bellefonte plant
20 were utilization facilities, it had none of the	20 was a utilization facility?
21 additional language you added in your answer.	21 MR. LEMBKE: I object to the form of that
Page 266	Page 268
1 A. I didn't --	1 question. That's not a question. He's explained
2 MR. LEMBKE: Hold it. Hold it, Mr. Burns.	2 already why that can't be answered yes or no.
3 There's no question there. That's a statement and I	3 He said it depends on the context.
4 move to strike it. It's argumentative.	4 So, Mr. Burns, you do not have to answer
5 BY MR. O'REAR:	5 that question yes or no. And it's asked and answered.
6 Q. Doesn't the letter say in the present	6 BY MR. O'REAR:
7 condition, which would be June 29, 2006, "Neither of	7 Q. Waiting on an answer, Mr. Burns.
8 the subject units can be considered a utilization	8 A. My answer is as of that date, I would not
9 facility as so defined."	9 consider -- that is TVA's representation that it is
10 MR. LEMBKE: Asked and answered, objection.	10 not capable of being put into operation.
11 You can answer it again.	11 But I would say the point it does not any
12 THE WITNESS: I don't disagree with what the	12 longer being considered a utilization facility, would
13 letter says. Again, I believe you have to understand	13 be the date of Ms. Haney's letter on September 14,
14 the context in which that is presented. And the	14 2006, when she approves TVA's construction permit.
15 context there is different than the context addressed	15 Q. Okay. And can you answer yes or no whether
16 in my report, with respect to transfer of the site	16 the Bellefonte plant was a utilization facility when
17 prior to transfer of construction permit.	17 this letter was issued on June 29, 2006?
18 Because this is about killing the plant and	18 MR. LEMBKE: I object to the form of the
19 that's what we're talking about here.	19 question, it's argumentative. He's answered -- he
20 BY MR. O'REAR:	20 just answered that question and he explained why
21 Q. And so you agree that the plant was not a	21 that's not a yes or a no. And, so, this is

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<p style="text-align: right;">Page 269</p> <p>1 harassment, he asking him the same question. He's not 2 giving you the answer you want.</p> <p>3 BY MR. O'REAR:</p> <p>4 Q. Can you answer yes or no to that question?</p> <p>5 A. I'm not even sure of what the question is.</p> <p>6 Was it still -- would I still consider it or 7 was it still considered?</p> <p>8 Q. No, sir. I know I've asked it four or five 9 times because I'm trying to get an answer.</p> <p>10 A. Yes, and I answered several times.</p> <p>11 Q. Can you answer yes or no whether on June 12 29th, 2006 the Bellefonte plant was a utilization 13 facility?</p> <p>14 A. My prior answer was yes, it was because 15 until the NRC released its jurisdiction on 16 September 14th, 2006, I would consider it such.</p> <p>17 Q. And did you not want to be examined on this 18 letter? Is that why it's not listed in your report?</p> <p>19 A. No, I actually -- I may have read this 20 letter. But what I thought was important was the 21 letter from Ms. Haney with respect to the termination.</p>	<p style="text-align: right;">Page 271</p> <p>1 whether or not this plant is a utilization facility?</p> <p>2 THE WITNESS: As I say I may have looked at 3 the letter. I don't think it's dispositive of the 4 question because of the significant difference in the 5 circumstances.</p> <p>6 BY MR. O'REAR:</p> <p>7 Q. Okay. Do you think TVA's position and 8 statements regarding whether or not the plant is a 9 utilization facility are important factors in forming 10 your opinion?</p> <p>11 MR. LEMBKE: Objection, vague.</p> <p>12 THE WITNESS: I'm not sure I understand the 13 question.</p> <p>14 BY MR. O'REAR:</p> <p>15 Q. Well, you've opined it is a utilization 16 facility, correct?</p> <p>17 A. Correct.</p> <p>18 Q. In forming that opinion, was it important to 19 you to determine what TVA had said about that issue?</p> <p>20 A. Well, I think it was important for my 21 standpoint for some of the background on the</p>
<p style="text-align: right;">Page 270</p> <p>1 This is not some sort of avoidance.</p> <p>2 Because, again, the context here is not the context of 3 Nuclear Development. This is the Zimmer context.</p> <p>4 We want to walk away, not that we want to 5 pass it off and have somebody else do it or take over 6 the permits and what's the time of that.</p> <p>7 That's -- from my standpoint, that doesn't 8 bear on this.</p> <p>9 Q. So you didn't think this letter was 10 significant on the question of whether or not the 11 Bellefonte plant was a utilization facility?</p> <p>12 MR. LEMBKE: I object to the form of the 13 question. It's argumentative and it's vague as to 14 significance because you're questioning him about his 15 list of exhibits, not -- not what was significant.</p> <p>16 MR. O'REAR: I'm asking him why it's not on 17 his list.</p> <p>18 MR. LEMBKE: And he answered it.</p> <p>19 MR. O'REAR: Well, I'm asking him now, did 20 you not consider this letter to be significant in the 21 context of forming your opinion with respect to</p>	<p style="text-align: right;">Page 272</p> <p>1 Bellefonte plant.</p> <p>2 Yes, from that standpoint I would say yes.</p> <p>3 Q. But you dismissed TVA's position by stating 4 that it is not a utilization facility until at some 5 point in the future when the construction permits are 6 withdrawn. Is that correct?</p> <p>7 A. No, that's not correct. I'm not dismissing 8 their position. I'm saying their position was taken 9 in a context that is different than this one.</p> <p>10 Q. Okay. Let's look at the next exhibit.</p> <p>11 MR. LEMBKE: Which is what number?</p> <p>12 MR. O'REAR: It will be Number 208. The 13 exhibit is a letter dated August 22nd, 2006 from the 14 NRC to Mr. Singer at TVA.</p> <p>15 (Burns Exhibit No. 208 was marked for 16 identification.)</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Do you have that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And I mean, is this letter listed in your 21 report?</p>

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1 A. I don't recall. It may not be.	1 Q. So you didn't consider this letter when you
2 Q. Let's look at it. Let's confirm whether it	2 prepared your report?
3 is in your report or not in your report first.	3 A. I don't think I looked at this letter
4 A. I do not see a specific reference.	4 specifically.
5 Q. So are you saying it's not listed in your	5 Q. Did you look at the environmental assessment
6 report. Is that correct?	6 when you prepared the report?
7 A. That's correct.	7 A. I'm not sure that I looked at the
8 Q. Okay. Can you identify this as a letter	8 environmental assessment. I saw that it was
9 dated August 22nd, 2006 from the NRC to TVA regarding	9 referenced in Cathy Haney's letter.
10 the Bellefonte construction permit?	10 Q. Okay. All right. Are you on Page 3 of the
11 A. Yes, it is.	11 environmental assessment?
12 Q. Would you turn to the fifth page of the	12 A. Yes.
13 exhibit which is Page 3 of the environmental	13 Q. And you see the last paragraph. Let me read
14 assessment.	14 it. Make sure I read it correctly. "By letter dated
15 A. It's labeled Page 3.	15 June 29, 2006 the permittee stated that neither of the
16 Q. Okay. It's labeled Page 3.	16 units can be considered a utilization facility as
17 I mean, well, let's back be up on that.	17 defined in 10 CFR 50.2. At the time the construction
18 The letter itself says, "Enclosed is a copy	18 of the units was deferred, TVA considered Unit One to
19 of the environmental assessment and finding of no	19 be 88 percent complete and Unit Two to be 58 percent
20 significant impact related to your request for	20 complete. At this time neither reactor has the
21 withdrawal of the construction permit." Is that	21 necessary structures, systems or components in place
Page 274	Page 276
1 correct?	1 to sustain a controlled nuclear reaction. Over the
2 A. That's correct.	2 past several years, key components such as the control
3 Q. And then the attachment is the environmental	3 rod drive mechanisms form both Unit One and two have
4 assessment and finding of no significant impact. Is	4 been removed from the site which precludes the ability
5 that correct?	5 of the units to operate as nuclear reactors. The
6 A. That's correct.	6 current condition of the plant does not allow
7 Q. And that's a finding by the NRC, correct?	7 operation. Therefore neither plant can be considered
8 A. Correct.	8 a utilization facility."
9 Q. All right. And would you consider this to	9 Did I read that correctly?
10 be important precedent for you to consider in the	10 A. Yes, that's what I read.
11 context of whether or not the Bellefonte plant is a	11 Q. And the last sentence of that paragraph was
12 utilization facility?	12 a statement by the NRC staff. Is that correct?
13 A. Well, this letter is part of the process of	13 A. What's the last statement, the current
14 the NRC acting on the termination of the construction	14 condition?
15 permit. So it's significant from that standpoint.	15 Q. Yes.
16 Q. Is it significant from the standpoint of	16 A. Yes, well, this is an NRC document.
17 determining whether this plant is a utilization	17 Q. And it's an NRC conclusion about this plant.
18 facility?	18 Is that correct?
19 A. I -- well, I haven't read it at this point	19 A. That's correct.
20 and I don't know what it says about that, so I can't	20 Q. And the conclusion is the current condition
21 say.	21 of the plant does not allow operation. Therefore

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1 neither plant can be considered a utilization 2 facility. 3 That's the NRC's conclusion, correct? 4 A. That's what it states. Again, in the 5 context that I described with respect to Cathy Haney's 6 letter and to other -- and with other documentation 7 here. We're looking at a process that's trying to 8 basically walk away from the plant and end NRC 9 jurisdiction. So those statements -- this is just 10 like statements we've been talking about for the last 11 hour. 12 Q. Well, it doesn't say the plant -- neither 13 plant can be considered a utilization facility 14 whenever we withdraw the construction permit, did it? 15 A. Well, it doesn't use that language but 16 that's the entire purpose. You've got to make -- 17 they're going to make that finding in order to say NRC 18 is satisfied that your restrictions can be terminated 19 over the facility. 20 Q. Well, let me ask you this. What the -- TVA 21 said and what the NRC agreed to was that in order to	1 BY MR. O'REAR: 2 Q. Well, in our situation nobody is going to 3 take it up and keep running with it unless they get 4 two permits; one a construction permit and then get an 5 operating license. Is that correct? 6 A. Well, it depends on how many in the 7 facility. Two construction permits and I presume two 8 operating licenses. But again, the construct is, is 9 this a circumstance -- that's a circumstance in 10 which there is a continuing NRC interest in the site 11 as well as the appropriateness of transfer of the 12 permit. And that's what I have been speaking to. 13 This is a circumstance in which everyone's 14 walking away from the permit and from what's left of 15 the site. 16 Q. And the focus of -- both of TVA and the NRC 17 regarding whether or not this is was a construction -- 18 excuse me, a utilization facility was on whether it 19 could operate as a nuclear reactor. Wasn't that the 20 key inquiry here? 21 MR. LEMBKE: Well, I object. First of all,
1 get to that point, we are declaring to you right now 2 this plant site is not a utilization facility. 3 Isn't that what was said and agreed to -- 4 said by TVA, agreed to by the NRC? 5 MR. LEMBKE: I object to the form, it 6 misstates his testimony, lack of foundation. 7 THE WITNESS: Well, what I had said is that 8 what it reflects is a representation of this 9 circumstance in these various documents we've been 10 talking about, reflects the circumstance in which TVA 11 is willing or is acting to cede its construction 12 permit. 13 That's to make certain representations and 14 do certain things with respect to this site. To do 15 that, the NRC needs to be able to find that it would 16 be satisfied with that and satisfied that the plant is 17 no longer in the condition that it would need to 18 assert continued jurisdiction. And that's what 19 they're doing here. As I say, very similar to the 20 Zimmer situation. It is not a situation where 21 somebody wants to take it up and keep running with it.	1 that's a compound question. And second of all, 2 there's no foundation for his comment on what third 3 parties were thinking at the time. 4 MR. O'REAR: Well, I'm not asking him what 5 they were thinking, I'm asking him about what they 6 said. 7 MR. LEMBKE: Well, then I object to the 8 question because you misstate the evidence. You've 9 already been over this. 10 BY MR. O'REAR: 11 Q. So let's go back. 12 MR. LEMBKE: Now, you're trying to change 13 what the evidence says. 14 And we've been going about an hour. Is this 15 a good time for a short break? 16 MR. O'REAR: Let me finish this line, then 17 we can. 18 BY MR. O'REAR: 19 Q. If you would look at Exhibit 208, Page 3, 20 this paragraph that we've been referring to -- 21 A. I'm sorry?

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1 Q. 208, the last exhibit we've been talking 2 about.	1 MR. LEMBKE: Objection, asked and answered. 2 THE WITNESS: Again, what -- I would say no, 3 there's not a reference to specific design but that's 4 not the focus of what the NRC is looking at here. Its 5 focus is, is it satisfied from the standpoint of the 6 progression -- not progression, but the status of the 7 facility such that it would not be something that you 8 just turn a screw and the thing can be turned on.
3 A. The August 2006 letter. I forgot to mark 4 it.	9 That's, again, the whole idea of we're being 10 asked to cancel the permit and walk away as the 11 nuclear regulator. Those are the things from that 12 standpoint and that's why these things were satisfied, 13 is because it can't be turned on, it's not something 14 that the termination that's tied particularly to the 15 design -- original design or changes that were made.
5 Q. 208.	16 Q. And then at some point after this letter of 17 August 22nd, 2006, the NRC agreed to terminate the 18 permit, correct?
6 A. Got it.	19 A. Yes, I believe that's in Cathy Haney's 20 letter.
7 Q. Okay. Looking at that same paragraph, it 8 says in the next to last sentence, "Over the past 9 several years key components such as the control rod 10 drive mechanism for both Unit One and two have been 11 removed from the site, which precludes the ability of 12 the units to operate as nuclear reactors."	21 Q. September 14, 2006, correct?
13 And so, what's -- the focus on there is 14 whether it can operate as a nuclear reactor for 15 determining whether it is a utilization facility, 16 correct?	
17 A. That's what the sentence is focused on.	
18 Q. Okay. And there's no reference to what the 19 original design plans were or what the plant was 20 designed for, is there?	
21 A. Well, there's no specific reference to, you	
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1 know, the earliest design documents. But I'm not sure 2 I understand the relevance.	1 A. Yes. Again, it's the Cathy Haney letter. I 2 sort of lost track of it. This is Exhibit 130.
3 Q. The relevance is that the design documents 4 were still in effect but the determining factor is 5 whether it could operate as a nuclear reactor, not 6 whether it was designed as a nuclear reactor.	3 Okay. Let's take a five-minute break. 4 (Whereupon, a recess ensued.)
7 MR. LEMBKE: That's not a question.	5 THE WITNESS: Back on the record.
8 MR. O'REAR: That was a question.	6 BY MR. O'REAR:
9 BY MR. O'REAR:	7 Q. Mr. Burns, can you put Exhibit 83 before 8 you? This is 10 CFR part 50, the Commission policy 9 statement on deferred plants.
10 Q. Is that correct?	10 MR. LEMBKE: What was the exhibit number?
11 MR. LEMBKE: I object. Object to the lack 12 of foundation and asking him to testify to what third 13 parties were thinking.	11 MR. O'REAR: Eighty-three.
14 MR. O'REAR: I don't think I asked that.	12 THE WITNESS: I saw it, now I may have --
15 BY MR. O'REAR:	13 got it. Sorry.
16 Q. You can answer the question.	14 BY MR. O'REAR:
17 A. What is the question?	15 Q. That's fine. You're familiar with that
18 Q. The question is: There is no reference in 19 this document by the NRC to what the plant was 20 designed for in stating whether or not the plant is a 21 utilization facility, is there?	16 document, aren't you?
	17 A. Yes, I am.
	18 Q. And did you help construct that when it was 19 originally adopted?
	20 A. I did not author it or did not -- its 21 development. However, at the time it was adopted I

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1 was a legal advisor to Commission Carr and his legal 2 advice -- this came before the Commission. It was 3 endorsed and issued as a Commission policy statement, 4 so I would have advised him on it.	1 reporter, the exhibit as I have it and as it's 2 supposed to be submitted at the deposition does not 3 have blank pages. 4 BY MR. O'REAR:
5 Q. And this is a rule of the Commission, right, 6 a rule of the NRC?	5 Q. Okay. Page 3?
7 A. No, it's a policy statement.	6 A. Yes.
8 Q. Just a policy statement?	7 Q. Page 3 contains definitions of deferred 8 plant and terminated plant. Is that correct?
9 A. Yes.	9 A. Yes.
10 Q. Okay. Not considered to be a " rule"?	10 Q. Do you see that at the bottom?
11 A. Not an enforceable rule, no.	11 A. Yes, I do.
12 Q. Is it used by the NRC staff as guidelines?	12 Q. All right. Sir, and it defines a deferred 13 plant as, "A nuclear power plant in which the licensee 14 has ceased construction or reduced activity to a 15 maintenance level, maintains the construction permit 16 in effect and does not announced termination of 17 plant."
13 A. Yes. That was its intention.	18 That is correct -- did I read that 19 correctly?
14 Q. And when you referred earlier to the 15 wholistic set of authority that need to be considered 16 here, would you have included this deferred plant 17 policy statement within that group of things to be 18 considered?	20 A. Yes.
19 A. I think the policy statement has relevance. 20 It reflects the overall construct for construction 21 permits and it was intended to address the	21 Q. And a terminated plant is defined as a,
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1 circumstances that arose in the mid 1980s when there 2 were a number of plants that were under construction 3 but it was uncertain as to whether they would proceed 4 to completion and operation.	1 "Nuclear plant at which the licensee has announced the 2 construction has been permanently stopped, but which 3 still has a valid construction permit." See that?
5 Q. Let's look at Page 3 of the exhibit.	4 Did I read that correctly?
6 MR. LEMBKE: Well, you mean numbered Page 3?	5 A. Correct.
7 Because there are a bunch of blank pages, right?	6 Q. So, both deferred plants and terminated 7 plants exist while construction permits are valid and 8 remain in effect. Is that correct?
8 MR. O'REAR: I don't have any blank pages.	9 A. Yeah. What the policy does is it provides a 10 dichotomy that reflects those for which a final 11 decision are really just a deferral of a continuation 12 of project might occur, and those in which basically 13 the license holder is saying, we're over it and we're 14 going to turn it in or we may put it -- or we may even 15 try to transfer it. That can also happen with a 16 deferred plant as well.
9 I'm sorry.	17 Q. What I was trying to get you to clarify is 18 that in both instances the construction permits remain 19 in effect?
10 THE WITNESS: I have one Page Number 3 here.	20 A. Yes, valid construction permits, I agree.
11 MR. O'REAR: Yeah. I do mean numbered Page 12 3 but I don't have no blank pages on my exhibits.	21 Q. And in your report in Paragraph 47 --
13 Maybe it was a copying error.	
14 MR. LEMBKE: Every other page of ours is 15 blank.	
16 MR. O'REAR: Is Page 3 in there?	
17 THE WITNESS: Yeah.	
18 BY MR. O'REAR:	
19 Q. Let's look -- well, the blank pages are not 20 part of the exhibit or should not be.	
21 MR. O'REAR: I just note for the court	

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1 A. Okay.	1 plants, too?
2 Q. -- you cite to the policy statement on	2 MR. O'REAR: I'm asking him if the policy
3 deferred plants, do you not?	3 behind the statement regarding transfer of ownership
4 A. In 47? Yes, I do.	4 of terminated plants in his opinion equally applies to
5 Q. Yes. Forty-seven and 48?	5 deferred plants.
6 A. Yes, I do.	6 THE WITNESS: Essentially when you analyze
7 Q. And that's this Exhibit 83, right?	7 the provision, essentially there is an equivalency
8 A. Yes. I was using an actual image from the	8 particularly with respect to provision B2(b), that
9 Federal Register but that's what this is, too.	9 lowercase B. Provision B2(a) really goes to basically
10 Q. If you would turn to numbered Page 6 of the	10 the salvaging of components that, for example, a
11 statement --	11 company that may want to sell them and this has
12 A. Hold on. Okay. I think I've got it.	12 happened obviously and we've talked about some
13 The copy is not -- the page numbers on the	13 circumstances earlier in -- about a qualifying
14 copy are not correct.	14 experience. But it's similar where a license holder
15 Q. I apologize.	15 has a steam generator or it has a turbine or something
16 A. Is Section B: Terminated Plants?	16 like that, and it may want to sell that and basically
17 Q. That's correct?	17 recoup some losses -- some of its losses by selling
18 A. I'm on that page.	18 equipment. And so what that provision does is it
19 Q. In your opinion, did the Bellefonte plant at	19 says, you need to make sure you maintain your quality
20 any point meet the definition of a terminated plant?	20 documentation in short form.
21 A. It could be considered so, although I don't	21 The second one is really very much like the
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1 consider that significant.	1 deferred plant aspect here, and that is if you're --
2 Q. Okay. And you don't consider it significant	2 if you decided to terminate your commitment to that
3 because you believe the policy behind this statement	3 and you wish to transfer, there still needs to be --
4 equally applies to deferred plants and terminated	4 basically you're still advised to maintain the
5 plants?	5 preservation and maintenance and documentation program
6 A. Essentially, yes.	6 on it.
7 Q. So when the policy statement refers to in	7 And so that's what I'm saying. This
8 Section B a terminated plant and in Paragraph 2 of	8 provides -- there are two different ways things are
9 Section B, measures that should be considered for	9 going. One is you're going to -- you're going to have
10 reactivation or transfer of ownership of terminated	10 a lot of people scavenge your existing equipment. And
11 plants, do you think those policy statements equally	11 the other one being you want to maintain it, so you
12 apply to deferred plants?	12 don't raise the issues about the ability to transfer
13 A. I'm sorry. Which in --	13 -- as a quality or raise questions about the quality
14 Q. B2, measures that should be considered for	14 of what you're transferring.
15 reactivation or transfer of ownership of the	15 BY MR. O'REAR:
16 terminated plant?	16 Q. This policy statement under measures that
17 MR. LEMBKE: Well, I'm going to object to	17 should be considered for reactivation or transfer of
18 the form. It misstates the evidence.	18 ownership does not say, make sure you get a transfer
19 MR. O'REAR: I don't think.	19 of the construction permit before you transfer the
20 MR. LEMBKE: I mean, it says it's for	20 plant, does it?
21 terminated plants and you're asking is it for deferred	21 A. Say that again, please.

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<p>1 Q. This policy statement about measures to be 2 considered regarding the transfer of ownership does 3 not say, make sure you get the construction permit -- 4 in effect construction permit transferred before you 5 transfer the plant?</p> <p>6 A. It's not --</p> <p>7 MR. LEMBKE: Objection.</p> <p>8 THE WITNESS: It's not that detailed about a 9 specific checklist or steps. It does highlight that 10 you need to have in the authorization of the -- you 11 need the transfer authorization. Again, that's in the 12 context.</p> <p>13 The NRC has control of the construction 14 permits in particular and you need to act in 15 conformance with them and follow through with the 16 process.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Let's move to the next exhibit, which is 19 Exhibit 129, previously marked. It is the proposal on 20 decommissioning, which is a big thick document.</p> <p>21 A. Yes. Got it.</p>	<p>1 I'm not sure if the Commission has finished 2 voting on it or intends to finish voting on it.</p> <p>3 Q. Does the proposed rule represent the 4 proposal from the NRC staff, that this is a rule that 5 the Commission needs to adopt?</p> <p>6 A. Yes. Almost all rulemakings need the 7 Commission's approval before they're published for 8 comment and their approval when they're adopted as the 9 final rule. And this would be one of them because 10 it's a significant substantive rule.</p> <p>11 Q. If you can look at Page -- Pages 172 through 12 -- well, look at the 172 through -- well, look at 172 13 through 173, I believe. There may be -- they may be 14 copied front and back.</p> <p>15 A. Yes, it is. Okay.</p> <p>16 Q. In the proposed rule at the bottom of 172, 17 it uses the Atomic Energy Act statutory definition of 18 a utilization facility, does it not?</p> <p>19 A. Yes, it appears to.</p> <p>20 Q. And then on Page 173, it references the 21 regulatory definition underneath the statutory</p>
<p>1 (Burns Exhibit No. 129 was marked for 2 identification.)</p> <p>3 THE WITNESS: I've got it.</p> <p>4 BY MR. O'REAR:</p> <p>5 Q. Now, you referred to this in Paragraph 49 of 6 your report, did you not?</p> <p>7 A. Yes.</p> <p>8 Q. And I think I asked you earlier, were you 9 involved in the formulation of this proposed rule?</p> <p>10 A. You did ask me that.</p> <p>11 Q. Okay. And what is the current status of the 12 rule?</p> <p>13 A. I don't -- don't know. As far as I know, it 14 has not been -- again, the document we have here is a 15 draft of a proposed rule that was sent to the 16 Commission for approval. And given the stuck can I 17 pay number sometime in between.</p> <p>18 I do not know the specific status of it 19 other than to say as far as I'm aware, that it has not 20 been issued for public comment in terms of a proposed 21 rule in the Federal Register.</p>	<p>1 definition, correct?</p> <p>2 A. The reference is to 10 CFR 50.2?</p> <p>3 Q. Right.</p> <p>4 A. Yes, it references 50.2.</p> <p>5 Q. Do you know whether it would be adopted by 6 the Commission or not? Do you have any prediction on 7 that?</p> <p>8 A. I can't predict that. I can't predict that.</p> <p>9 I know I -- at the time I left the Commission in 10 April 2019, it was pending before the Commission. But 11 the majority of the Commission had not voted and since 12 I haven't seen it in the Federal Register, I presume 13 that has not as yet happened.</p> <p>14 I really -- this sort of goes on beyond what 15 we're really talking about, but there are a number of 16 reasons I can speculate why it might not happen.</p> <p>17 Q. You don't need to. Directing you back to 18 173, the proposed rule cites the Zimmer case favorably 19 as a practical approach regarding the decommissioned 20 plant. Is that correct?</p> <p>21 A. That's correct.</p>

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1 Q. Okay. So whether this rule is adopted or 2 not, the Zimmer precedent will remain, will it not? 3 A. Yes. And I don't question the Zimmer 4 precedent.	1 said in my original report, one of the reason it 2 doesn't surprise me that there hasn't been a lot of 3 reference back to it is the fact that most of this -- 4 these issues over construction were occurring in the 5 late 1970s and early 1980s.
5 Q. Okay. Now, let's turn to your supplement to 6 your report, which should be there somewhere. 7 MR. O'REAR: We're going to mark -- this is 8 marked Exhibit 201. 9 (Burns Exhibit No. 201 was marked for 10 identification.)	6 Q. Well, not only has there not been a lot of 7 reference, there hasn't been any reference to it, has 8 there? 9 A. I don't --
11 THE WITNESS: Yes, I have it. It's 201? 12 BY MR. O'REAR: 13 Q. Yes. 14 A. Okay. 15 Q. I direct your attention to Page 3, Paragraph 16 10. 17 MR. LEMBKE: Give me just one second to pull 18 it. Okay. And you want that marked 201?	10 MR. LEMBKE: Objection, asked and answered. 11 BY MR. O'REAR: 12 Q. Are you aware of any reference to it? 13 A. I am personally -- 14 MR. LEMBKE: Same objection. 15 MR. O'REAR: You're talking over the 16 witness. 17 MR. LEMBKE: I'm entitled to make my 18 objection, Mr. O'Rear.
19 MR. O'REAR: Yes. 20 MR. LEMBKE: All right. 21 BY MR. O'REAR:	19 MR. O'REAR: I understand, but you're both 20 talking at the same time. 21 BY MR. O'REAR:
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1 Q. You allude to the Dr. Asperger letter in 2 Paragraphs 10 and at the end of Paragraph 11. Is that 3 correct? 4 A. Right. 5 Q. And at the end of Paragraph 11 you state 6 there, "Nothing in the policy statement," referring to 7 this deferred plant policy statement which we 8 previously discussed, "indicates an alteration or 9 abandonment of the NRC's view of the meaning of the 10 term 'utilization facility' as expressed in Acting 11 Director Case's letter." 12 Do you see that? 13 A. Yes, I do. 14 Q. Are you aware of that letter having ever 15 been cited by the NRC as authority? 16 Yes -- by the NRC as authority? 17 A. I'm not aware of particular references in 18 adjudication since the time that it was issued. I 19 would note that the Case letter references Marble 20 Hill, which I think is significant. 21 And again, reflective of practice. And I	1 Q. Go ahead. 2 A. I personally am not aware of a particular 3 reference to it. 4 Q. Okay. Mr. Burns, does it strike you unusual 5 under the facts of our lawsuit that TVA was the 6 construction permit holder and licensee, yet they were 7 not the applicant to the NRC for the transfer of the 8 construction permit. Is that unusual? 9 MR. LEMBKE: Object to the form, as to lack 10 of foundation and vagueness. 11 THE WITNESS: The question is whether I see 12 it as unusual that the TVA was not applicant? 13 BY MR. O'REAR: 14 Q. Yes. 15 A. I'm not sure about that. I have read some 16 of the staff guidance documents and where it indicates 17 that the holder may join in. 18 Q. Well, in your experience was the applicant 19 for the transfer of the license typically the current 20 holder of the license or the licensee and not the 21 prospective licensee?

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1 MR. LEMBKE: Object to the form. 2 Are you talking about a construction permit 3 application for transfer or something else?	1 A. If you would hold on one second. I'm having 2 trouble finding it.
4 MR. O'REAR: Was not really limited to that. 5 I said a license which would include construction 6 permit.	3 MR. LEMBKE: I don't see it because I have 4 my notebook with a one on it, so let me pull it out.
7 THE WITNESS: You know, quite honestly I'm 8 not sure I focused on who has actually made the 9 application. It's been more the focus and my 10 recollection is more about, you know, the process of 11 transfer or the need to have this authorization for 12 the transfer.	5 Okay. I've got it. 6 BY MR. O'REAR: 7 Q. Mr. Gleaves was the project manager on the 8 Bellefonte -- the Bellefonte application for a period 9 of time. Is that right?
13 BY MR. O'REAR:	10 A. That's my understanding. 11 Q. And this e-mail attaches a document that's 12 titled: Procedures For Handling License Transfers. 13 Effective date, June 15, 2017.
14 Q. Were you aware of the fact in this case 15 whereby TVA refused to be the applicant for the 16 transfer of the license at the request of Nuclear 17 Development?	14 A. Yes. June 5, 2017. 15 Q. June 5. Sorry.
18 A. I have seen some of the e-mails which have 19 been offered as exhibits that seem to suggest that. 20 Q. Are you aware of the facts in this case that 21 TVA did not participate at all in the application	16 And are you familiar with this document? 17 A. I have some general familiarity with it. 18 Q. Will you turn to Page -- it's Page 2 of the 19 -- at the top, right-hand corner Page 2 of 14 of the 20 procedures document.
	21 I'm directing you attention to Paragraph 4,
Page 302	Page 304
1 process? 2 MR. LEMBKE: I'm going to object to that 3 form for lack of foundation and misstates the evidence 4 in the case.	1 captioned basic requirements? 2 A. Yes.
5 BY MR. O'REAR: 6 Q. Are you aware of evidence in this case, Mr. 7 Burns, that TVA refused or failed to participate in 8 the application process?	3 Q. Will you get to that page? 4 A. Yes, basic requirements. Paragraph 4, yes. 5 Q. So it says at the beginning, "Their license 6 transfers are unique and they result in the exchange 7 of ownership and/or responsibility for operating a 8 nuclear facility."
9 A. Again, I've seen some exhibits with respect 10 to the interactions between Nuclear Development and 11 TVA. I would be reluctant to -- I have no opinion on 12 that and I would be reluctant to basically voice one 13 about the relationship between the two entities.	9 "Typically the exchange is orchestrated by a 10 team of lawyers representing both the current and 11 future owners." Do you see that?
14 Q. If you would look at Exhibit 81, which 15 should be near the bottom of the stack, if you can 16 find it?	12 A. Yes, I do.
17 A. Yeah, I have it.	13 Q. And while this is the directed to operating 14 licenses, would it also apply to construction permits?
18 Q. And the cover page is an e-mail from Billy 19 Gleaves of the NRC to Bill McCollum of Nuclear 20 Development. Do you have see that, dated 21 September 19, 2017?	15 A. I think the general -- general guidance -- 16 and again, this is primarily a guidance document 17 issued to the staff. It may have relevance for those 18 outside the Agency, but I think directed to the staff. 19 But I would agree that it has some meaning 20 in terms of transfer of licenses or construction 21 permit.

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1 Q. And it states in Paragraph 2 under Section 2 4, "The legal staff of OGC will be involved throughout 3 the processing of the application. Frequent 4 communications between the OGC and legal staff of the 5 current and/or future owners will occur." Do you see 6 that?	1 technical staff who issues the transfer order. 2 BY MR. O'REAR: 3 Q. What do you recall about Mr. Chandler's 4 contact with the OGC staff?
7 A. Yes.	5 A. I think Mr. Chandler was exploring the 6 question about a transfer of the site prior to 7 transfer of the permit. That's what I recall.
8 Q. And when you were in the Office of General 9 Counsel, was it the typical situation that both the 10 attorneys for the licensee and the perspective 11 licensee would work together in communicating whatever 12 was needed by the NRC to process the application?	8 Q. And how did you learn about that? 9 A. I read it in his deposition.
13 A. I would say that, you know, we would have 14 frequent contact and probably from both parties who 15 are engaging.	10 Q. Okay. You didn't know about it while you 11 were at NRC?
16 One of the -- one of the exceptions might 17 well be some of those instances where a licensee was 18 going into bankruptcy and reorganizing, so you'd have 19 the trustee in bankruptcy who you interacted with 20 rather than sort of counsel for the entity that was 21 being reformed or reformulated.	12 A. Oh, no. Not at all. 13 Q. So what you know would be whatever is 14 present in his deposition. Is that correct? 15 A. That's correct. 16 Q. Let's look at Exhibit 14. 17 A. What is it?
18 Q. Fourteen is an e-mail from Chris Chandler to 19 Tim Matthews, dated October 18, 2018. It's got an 20 exhibit sticker on it marked 14.	18 Q. Fourteen is an e-mail from Chris Chandler to 19 Tim Matthews, dated October 18, 2018. It's got an 20 exhibit sticker on it marked 14.
21 (Burns Exhibit No. 14 was marked for	21 (Burns Exhibit No. 14 was marked for
Page 306	Page 308
1 Q. Are you aware with respect to the facts of 2 this case whether or not TVA had any frequent 3 communication with the NRC staff regarding the Nuclear 4 Development application?	1 identification.) 2 MR. LEMBKE: I don't think that's in my 3 stack.
5 A. I don't have any knowledge of the frequency.	4 MR. O'REAR: Okay. Well, I'm not going to 5 -- I didn't send it? I thought I did.
6 Q. If TVA was not frequently involved in any 7 communications regarding that application, would it 8 strike you as unusual or out of the ordinary?	6 Anyone have it?
9 A. I --	7 MR. LEMBKE: I think Mr. Burns and I are the 8 only ones who got it sent. Well, maybe Larry has it.
10 MR. LEMBKE: I object to the form, lack of 11 foundation.	9 THE WITNESS: I'm not seeing it. 10 MR. O'REAR: Well, the witness is the 11 important one.
12 You can go ahead, Mr. Burns.	12 MR. BLUST: Well, to whom was it?
13 THE WITNESS: I would expect some contact. 14 And I do recall -- again, I just don't -- I don't have 15 a particular awareness here.	13 MR. O'REAR: It's from Chris Chandler to Tim 14 Matthews, copied to Joe Shea.
16 I do have recollection that Mr. Chandler 17 spoke to a number of OGC staff at some point. But you 18 know, I just don't have it, any particular 19 understanding of what actually happened here.	15 THE WITNESS: I'm sorry. I'm not seeing it. 16 MR. O'REAR: All right.
20 I would expect both sides to have some 21 communication with the legal staff and eventually the	17 BY MR. O'REAR: 18 Q. Let me pose a hypothetical to you since you 19 don't have the actual document. 20 Would it strike you as unusual if Nuclear 21 Development sent a letter to TVA which proposed that

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1 TVA would sign such letter to the NRC, stating that	1 2015?
2 TVA consents to the requested transfer of the two	2 A. Yes, those are my mine.
3 construction permits. Would it strike you as unusual	3 That's the prepared copy of my remarks.
4 if that was done, that TVA would not sign and submit	4 Q. Were these remarks you in fact gave, since
5 such a letter to the NRC?	5 they were published on the NRC website?
6 MR. LEMBKE: Object to the form as to the	6 A. Yes. I mean it's the formal -- it's not a
7 vagueness of "unusual."	7 transcript but it's the formal copy. When I actually
8 THE WITNESS: I guess my answer would be I	8 gave it, I may have, you know, digressed here and
9 think it depends on other circumstances there.	9 there but not significantly.
10 I would expect some communication in	10 Q. Look on Page 4 of that speech. There's a
11 general. But, you know, context, I have to understand	11 section referring to the decommissioning proposal
12 more in terms of context and the necessity under the	12 you're making?
13 circumstances.	13 A. Right.
14 BY MR. O'REAR:	14 Q. See that? And this is at a time when it had
15 Q. When you said you would expect more	15 just come, the proposal had just come out. Is that
16 communication in general, were you referring to	16 correct?
17 communication from counsel for the licensee?	17 A. I think that --
18 A. I think I'm talking in effect, both -- both	18 Q. Excuse me. It's at a time when the
19 parties, so the communications between them with	19 Commission directed the staff to begin work on a
20 respect to something like that.	20 proposed rule?
21 Q. All right. I've got I believe two more	21 A. Yeah, that's more accurate. Because I don't
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1 exhibits. We're close to the end here.	1 think the proposed rule actually got up to the
2 There are two speeches in there that you	2 Commission until 2018.
3 made that were published on the NRC website?	3 Q. In your speech you said that this proposed
4 A. Okay.	4 rule was to, "Increase the efficiency and
5 Q. Do you see them?	5 predictability of the NRC's regulatory program." Do
6 A. Yes, I do.	6 you see that in the second paragraph?
7 Q. Okay. And let's mark the one dated April	7 A. Second paragraph? Yes, I do.
8 30th, 2015 as Exhibit 210, I believe unless I miss	8 Q. And so again, this proposed rule in your
9 counted.	9 view was a good thing that would increase efficiency
10 MR. O'REAR: Is that the next number, Mr.	10 and predictability, right?
11 Court Reporter?	11 A. Yeah. The effort to put together a rule was
12 THE COURT REPORTER: Let me check it.	12 in my view at that time a good -- a way we should be
13 (Burns Exhibit No. 210 was marked for	13 going as an Agency to deal with some of the issues
14 identification.)	14 that are frequently described there.
15 BY MR. O'REAR:	15 Q. Let's move to the next exhibit, which is the
16 Q. Have you marked that, Mr. Burns?	16 speech on March 8th, 2016 that I would like marked as
17 A. 210, yeah, the one to the USEA.	17 Exhibit 211.
18 Q. Right. This one will just take a minute.	18 (Burns Exhibit No. 211 was marked for
19 If you look on Page 4 of that speech -- and	19 identification.)
20 can you identify Exhibit 210 as your prepared remarks	20 BY MR. O'REAR:
21 to the U.S. Energy Association meeting April 30th,	21 Q. And are you familiar with this speech?

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1 A. Yes, I am.	1 to guard against making decisions in isolation. Is
2 Q. And so, these remarks are consistent with	2 that correct?
3 the remarks you actually made at the meeting?	3 A. That's correct. That's what I said. Those
4 A. Yes.	4 are the general principles. I have applications to
5 Q. Whatever meeting this was. Tell us what	5 specific situations.
6 meeting this was?	6 Q. And so in the context of the NRC making a
7 A. This was at the NRC's annual regulatory	7 decision regarding Nuclear Development, you believe it
8 information conference. It's basically a conference	8 would be appropriate to consider the real life and
9 sponsored by the Agency once a year. Didn't happen	9 actual operating experience and weigh public and
10 this year because of COVID-19.	10 stakeholder input. Is that correct?
11 But -- and you get a lot of attendance from	11 MR. LEMBKE: I want to object based on
12 both the industry, NGOs, other people added. In many	12 assuming facts not in evidence. I was unaware that
13 ways it's considered probably next to the IAEA general	13 Nuclear Development -- they ever operated anything.
14 conference in Vienna, probably the most significant	14 BY MR. O'REAR:
15 annual conference on nuclear regulations.	15 Q. Would that be a fair statement?
16 Q. Let me ask you to look at Page 2 of the	16 MR. LEMBKE: Same objection. And I want to
17 exhibit. I want to ask you about some of your	17 object on the basis of vagueness. What action are you
18 comments in the speech. I'm going not going to ask	18 talking about? When you're talking about the action
19 you about everything.	19 on --
20 The first one I want to ask you about is the	20 MR. O'REAR: I'm talking about principles
21 paragraph about two-thirds of the way down the page	21 that he believes Nuclear Development -- excuse me, NRC
Page 314	Page 316
1 which starts, adequate protection?	1 should apply towards Nuclear Development's
2 A. Yes.	2 application.
3 Q. Let me just read that. "Adequate	3 BY MR. O'REAR:
4 protection' is a difficult phrase to explain to lay	4 Q. Do those principles include what you stated
5 audiences, when adequate in the usual vernacular	5 in this speech in what I read, the part that I just
6 signifies just okay. For us of course it means the	6 read?
7 Commission must consistently and over time use its	7 A. I agree with the principles that I espoused
8 broad discretion to impose requirements it believes	8 and described in the speech. Again, they're
9 meets this mandate. It can be neither too lax nor too	9 principles I think ought to be followed and some of
10 strict. And we must not conduct our decision making	10 that is related to the consistency of application of
11 in a vacuum. We must consider real life and actual	11 NRC requirements as well as decision making that is
12 operating experience. And we must weigh public and	12 apparent.
13 stakeholder input to guard against making decisions in	13 And yes, this is a general statement, sort
14 isolation." Do you see that?	14 of like an overarching principle.
15 A. Yes, I do. Yes. I lost track.	15 Q. And then if you would turn to Page 3 --
16 Q. And did that state principles that you	16 well, at the bottom of Page 2 you say that you talked
17 believe should be followed by the NRC?	17 a bit about your regulatory philosophy --
18 A. Yes. It reflects my approach to regulation.	18 A. Right.
19 Q. And you believe that you should in the	19 Q. -- in the speech you gave last year. Do you
20 regulation consider real life and actual operating	20 see that?
21 experience and weigh the public and stakeholder input	21 A. Yes.

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<p>1 Q. And then at the top of Page 3, you're 2 talking about your regulatory philosophy. Is that 3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And you said, "Along those lines I believe I 6 am independent in my thinking and philosophy. I don't 7 adhere to a rigid ideology that compels a certain 8 outcome each time. So I believe I'm predictable in my 9 approach of evaluating each matter on a case by case 10 basis and applying rules deliberately and consistently 11 across the board." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And so that's an important principle for you 14 in your regulatory philosophy. Is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Thank you. You said next paragraph, "I am 17 also independent in that I'm open to new ideas and 18 solutions that others may offer. I listen open 19 mindedly to all stakeholders without becoming beholden 20 to just one point of view. I believe problems must be 21 clearly defined and I think there's rarely only one</p>	<p>1 Q. TVA?</p> <p>2 A. TVA is one.</p> <p>3 Q. Would you consider that NRC to be a 4 stakeholder?</p> <p>5 A. The NRC is basically the decisionmaker. And 6 usually you think of stakeholders as those with an 7 input, but those who are being affected by the Agency.</p> <p>8 Q. Would you consider the public to be a 9 stakeholder with respect to Bellefonte?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Then --</p> <p>12 MR. LEMBKE: Mr. O'Rear, we're now 13 seven hours and one-minute according to the court 14 reporter's calculation. So we'll need to be wrapping 15 it up.</p> <p>16 MR. O'REAR: Yeah, we're wrapping up.</p> <p>17 BY MR. O'REAR:</p> <p>18 Q. Well, let me direct you to Page 5 of this 19 speech.</p> <p>20 A. Okay.</p> <p>21 Q. Would you look at the sentence</p>
<p>1 solution to a problem, nor do believe the NRC has -- 2 always has the right answer to any given problem."</p> <p>3 Were those true statements, that was your 4 regulatory philosophy?</p> <p>5 A. That's my approach. And probably the best 6 example is given in the next few paragraphs with 7 respect to the NRC's treatment of flex equipment in 8 the post Fukushima era.</p> <p>9 Q. Well, before you describe that, you say in 10 the next sentence, "In my experience, oftentimes the 11 best decision, the consensus based solution is reached 12 through meaningful dialogue and all affected 13 stakeholders." Right?</p> <p>14 A. Yes, it is says that.</p> <p>15 Q. And the stakeholders in this case would 16 include Nuclear Development, right?</p> <p>17 A. In what case?</p> <p>18 Q. In this lawsuit, in this case that we're 19 here about, the stakeholders include Nuclear 20 Development?</p> <p>21 A. Correct, Nuclear Development.</p>	<p>1 three-quarters of the way down beginning "but I 2 argue?"</p> <p>3 A. Yeah, yeah. I'm there.</p> <p>4 Q. It says, "But I argue that the regulator 5 needs to contemplate for -- "the sweet spot" between 6 under-regulation and over-regulation pursue effective 7 regulation without imposing undue burden and stifling 8 innovation." Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And do you believe that is a proper 11 regulatory approach?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And so, tell me if you believe these 14 principles should be applied by the NRC in its 15 regulatory function.</p> <p>16 Do you think fairness should be a 17 consideration?</p> <p>18 A. Fairness is a consideration. And actually 19 what I would say, is the NRC reflects a number of 20 these concepts or ideas in what is called the 21 principles of good regulation, which is obviously</p>

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1 early 1990s.	1 foundation and vague as to what "impediment" is.
2 Q. Did those principles include practicality?	2 THE WITNESS: So the question, if NRC
3 A. I don't recall if practicality is there but	3 approves the application for transfer?
4 it's, you know, things like consistence with	4 Well, with respect -- if it approves the
5 transparency, you know, achieving a regulatory	5 application of transfer my focus has been on the
6 objective, those types of things.	6 regulatory process. And from my standpoint, the
7 Q. But fairness is certainly one of them?	7 approval of a transfer is what is necessary in order
8 A. Yes, absolutely, fairness. Because if you	8 to allow conveyance of, you know, the property
9 aren't fair, you're subjected to potential appeals in	9 interest on the site. So that's, you know, basically
10 the court of appeals.	10 I will stop there. You know, I recognize there may be
11 Q. Do you have an opinion as to whether under	11 other disputes between the parties but that's not what
12 the circumstances of this case where this plant is	12 I was asked to provide an opinion on.
13 presently inoperable, that the -- whether the transfer	13 MR. O'REAR: Okay. That's all I have.
14 of the site to Nuclear Development before the	14 Thank you for your time. I know it's been a long day.
15 construction permits are transferred poses an undue	15 MR. LEMBKE: Let's take a five minute break.
16 risk to the safety and wellbeing of the public?	16 I'll have some questions.
17 MR. LEMBKE: Objection, asked and answered.	17 (Whereupon, a recess ensued.)
18 We went over that earlier. We are over time and we	18 MR. LEMBKE: Back on the record.
19 shouldn't be going back over things you've already	19 EXAMINATION:
20 asked.	20 BY MR. LEMBKE:
21 MR. O'REAR: I'm not sure I asked it exactly	21 Q. Mr. Burns, I have a few follow up questions
Page 322	Page 324
1 that way.	1 for you.
2 MR. LEMBKE: It was subtly identical.	2 First, there's been -- you were asked a lot
3 MR. O'REAR: Okay. Well, he could have	3 of questions today about the definition of a
4 answered more quickly than your objection.	4 utilization facility. Does the definition of
5 MR. LEMBKE: I'm just saying I think it's	5 utilization facility factor in at all to your opinion
6 time to call time on this. We're now, beyond	6 concerning whether there'd be a permit violation if
7 seven hours.	7 TVA had transferred the site to Nuclear Development
8 BY MR. O'REAR:	8 before approval of the construction permit transfer?
9 Q. Well, do you believe there is any --	9 A. Yes, it does.
10 MR. LEMBKE: Mr. O'Rear, you're beyond your	10 Q. And how so?
11 time limit.	11 A. Well, the thing we've been talking about is
12 MR. O'REAR: Well, okay. I've got two more	12 it's obvious that this is not a facility that is ready
13 questions.	13 as we say to turn the switch and put into operation.
14 MR. LEMBKE: All right. Two.	14 But the framework, what I've been trying to
15 BY MR. O'REAR:	15 emphasize here is that the framework for regulation
16 Q. One question. Mr. Burns, if the NRC	16 that extends back decades wants -- has the NRC or its
17 approves the application submitted by Nuclear	17 predecessor the AEC -- it wants to assure that it has
18 Development's transfer of the construction permit, do	18 the oversight and control of a site at which a plant
19 you see any impediment or problem for TVA to convey	19 is being constructed and moving towards that type of
20 the site to Nuclear Development?	20 operation.
21 MR. LEMBKE: Object to the form, lack of	21 So, that's when I talk about the NRC not

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<p>1 wanting to bifurcate its jurisdiction or sort of the 2 patch do -- sort of patchwork oversight.</p> <p>3 That's what I'm talking about, and I think 4 that where also the decision in Marble Hill and Mr. 5 Case's 2206 decisions address.</p> <p>6 Again, what you have is -- is ultimately if 7 you're going to build that utilization facility, if 8 you're going to operate a utilization facility on the 9 site, you have the imprint of the NRC all the way 10 along.</p> <p>11 And dividing that or separating it out is 12 just not something in my experience and understanding, 13 Agency practice and precedent, that has been done.</p> <p>14 Q. In terms of, you know, Exhibit 199 in your 15 report with respect to your opinion reflected in -- 16 I'm trying to find where you talk about the actual 17 permit language. Paragraph 23.</p> <p>18 A. Twenty-three?</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. And --</p>	<p>1 takes some time before that -- you're able to be to 2 the point to turn on the switch.</p> <p>3 BY MR. LEMBKE:</p> <p>4 Q. All right. And if you look at the last 5 sentence of Paragraph 23 -- and I know you reference 6 elsewhere that the permit authorizes to construct a 7 utilization facility. That's what you're referring 8 to, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And then the statement in the permit that 11 the facilities would be located at on the applicant's 12 site, that's not tied in any way to the utilization 13 facility definition, correct?</p> <p>14 MR. O'REAR: Objection, leading.</p> <p>15 BY MR. LEMBKE:</p> <p>16 Q. How, if at all, is the definition of 17 utilization facility impacted on the phrase "will be 18 located on the applicant's site?"</p> <p>19 MR. O'REAR: Same objection.</p> <p>20 THE WITNESS: Well, I don't think it -- it's 21 not so much here that's a utilization facility. It's</p>
<p style="text-align: center;">Page 326</p> <p>1 A. I'm sorry. Go ahead.</p> <p>2 Q. Does the definition of utilization facility 3 have any bearing on whether the terms of the these 4 permit terms that you're referencing were complied 5 with?</p> <p>6 MR. O'REAR: Objection, asked and answered.</p> <p>7 THE WITNESS: Yes, in my view they do. And 8 again, because the context we have here is we have a 9 site for which there is a valid construction permit 10 and the intention is to transfer that permit, and the 11 intention is to continue work on that facility until 12 it became an operational facility.</p> <p>13 So in that -- in that context, that's why 14 it's significant. And that's why, I think going back 15 to the Marble Hill, the Marble Hill precedent has 16 bearing here. Because it reflects the intention of 17 the NRC to explore that it has the regulatory 18 oversight and imprint on the activities that may be 19 constructed -- they occur under construction.</p> <p>20 And that's why it's treated for those 21 purposes as a utilization facility. Recognizing it</p>	<p style="text-align: center;">Page 328</p> <p>1 what, you know, where the facility can be built. And 2 it also in my view, because there are aspects which 3 related -- which, for example, referenced here, the 4 part 100 exclusion area considerations. The idea that 5 it is a site owned by a named person or a named 6 entity, I think that that is significant. And it is 7 part in my view, part of the construction --</p> <p>8 BY MR. LEMBKE:</p> <p>9 Q. And same question as to phrase "shall be 10 constructed and located at the site described in the 11 application of Jackson County, Alabama, how if at all 12 does the definition of utilization facility affect 13 that particular requirement?</p> <p>14 A. Again, what it says is you can only proceed 15 with a utilization facility at that site.</p> <p>16 And that's the stricture, that's the 17 restriction that the NRC or here, the AEC, has imposed 18 on it.</p> <p>19 Q. All right. Earlier today, Mr. Burns, you 20 were asked questions about when a site becomes a 21 utilization facility. Do you recall that?</p>

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Page 329	Page 331
1 A. Yes.	1 Development's application for a construction permit
2 Q. And have you ever known the NRC to make a	2 transfer, are you aware of any promise they made
3 decision on the precise point at which a site becomes	3 concerning the recordkeeping, maintenance or security
4 a utilization facility?	4 requirements of the site?
5 A. I'm not area of a particular decision --	5 A. No, I'm not aware.
6 particular decision that says you must have done this	6 Q. If you look at Exhibit 124, which is Mr.
7 much to do that.	7 Case's letter to Dr. Asperger --
8 I think it's more in concert with the	8 A. Hold on. I got it. Yes, I've got it.
9 concepts reflected in the Marble Hill and the Case	9 Q. Am I right that this is a letter pertaining
10 letter.	10 to the Enrico Fermi Atomic Power Plant Unit Two?
11 Q. All right. Are you aware of any situation	11 A. Yes, I believe it is.
12 where the NRC has suggested that a facility that has	12 Q. And on March 3rd, 1978, do you know if the
13 not been -- for which a permit has not been withdrawn	13 Fermi plant Unit Two was capable of sustaining nuclear
14 or the party holding the permit has sought for it to	14 fission in a self-supporting chain reaction?
15 be withdrawn when it's as far long as either of the	15 A. I do not believe it was.
16 Bellefonte units were along, are you aware of the NRC	16 Q. And what familiarity do you have with that
17 ever having suggested that that's not a utilization	17 Fermi Unit Two plant?
18 facility?	18 A. Well, my familiarity is that I went to -- I
19 A. No.	19 actually visited that plant. I think it started up or
20 Q. Now, let me get you to look at Exhibit 205,	20 went critical in the mid 1980's, and I was involved in
21 which you were questioned about earlier, which is 10	21 some -- I think was some enforcement action with
Page 330	Page 332
1 CFR 50.5.	1 potentially -- it was petition related to Fermi in the
2 A. Hold on. I got it.	2 mid '80s. And so, I went out there just prior or it
3 MR. O'REAR: Which one?	3 could have been after it had gone critical. So again,
4 MR. LEMBKE: 255.	4 my recollection was that didn't happen until 1985.
5 BY MR. LEMBKE:	5 Q. And when you say go critical, what do you
6 Q. Does anything -- what, if anything, in 10	6 mean?
7 CFR Section 50.5 would impose requirements on Nuclear	7 A. Well, that means they basically sustained a
8 Development for their activities on the site after	8 nuclear reaction in the reactor.
9 they assumed ownership of it?	9 Q. Okay. Mr. Burns, what is the difference
10 A. It doesn't directly impose a new requirement	10 between a construction permit being transferred to
11 on a licensee. So it wouldn't in this circumstance.	11 another party versus a construction permit being
12 It reflects false -- making a false statement and	12 withdrawn from the NRC's perspective?
13 deliberate violations of the terms of the permit	13 MR. O'REAR: Objection, vague, overbroad,
14 holder regulations.	14 without any specificity.
15 Q. Earlier you talked about the PSAR with Mr.	15 THE WITNESS: Well, with respect -- I'll
16 O'Rear. Do you recall that?	16 start with one being withdrawn.
17 A. Yes.	17 When we talk about a construction permit
18 Q. Is the PSAR a part of the application for a	18 being withdrawn, that's the circumstance in which we
19 construction permit?	19 understand that the license holder, or the
20 A. Yes, it is.	20 construction -- the construction permit has decided to
21 Q. Are you aware in conjunction with Nuclear	21 abandon the project and we'll in effect withdraw the

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Page 333 1 permit. In other words, turn them back into the NRC. 2 And that's a circumstance we discussed today 3 in the Fermi project where basically Cincinnati Gas 4 and Electric decided it would not, you know, cross the 5 finish line with respect to Zinner, so it wanted to 6 pull back. It decided to turn in the construction 7 permit. 8 So the significance in that circumstance, 9 again, is what the interest -- the NRC interested in 10 it is saying, okay, fine, you're turning in the 11 construction permit. You're getting out of this 12 business, so to speak. But we to be assured that what 13 is left behind is not capable of being put into 14 operation. 15 So all of this discussion, for example, on 16 an operable or utilization facility or one being 17 capable of operation is going to that basically, 18 decision. It says is this a facility from the NRC's 19 standpoint that we can basically say, you're fine, 20 you've abandoned it. Go forward. Do whatever else 21 you want with respect to the site. But, we no longer	Page 335 1 and over the facility or the site where the activity 2 is subject to licensing, even if they're in hiatus 3 would be conducted. And which the future -- which the 4 transferee would intend to carry out. 5 So that's the significant difference, I 6 think, when we focus on the withdrawn license and one 7 that, for example, might be terminated but -- or in 8 deferred status but basically the candle hasn't been 9 blown out. There is still a potential future for that 10 facility. 11 Q. And are you aware of any circumstance where 12 there has been a transfer of ownership of a 13 non-withdrawn -- well, let me start over. 14 Are you aware of any circumstance where 15 there's been a transfer of ownership of a plant 16 subject to a valid construction permit where the 17 ownership was transferred before the NRC approved 18 transfer of the construction permit? 19 A. No, I'm not aware of such a situation. 20 Q. Let me get you to pull Exhibit 207. 21 A. What is that, again?
Page 334 1 have a regulatory interest in it. 2 So, again, when it's withdrawn, that's the 3 scenario you're looking at going to. 4 I think the deferred plan policy -- 5 BY MR. LEMBKE: 6 Q. Let me ask you, how does it differ, than, if 7 you have a request to transfer the construction 8 permit? 9 A. Well, a request for a transfer of the 10 construction permit by implication tells me that the 11 project is not over, that the transferee has an 12 interest in continuing it and potentially continuing 13 it to the point that it becomes a plant that needs an 14 operating license. 15 And so from that standpoint, the NRC has an 16 ongoing interest -- again, like with any transfer of 17 license, it has an interest in assuring that it is 18 transferred from the existing entity to one that is 19 qualified and meets the requirements of NRC licensing, 20 and that basically it continues to have that what I 21 call regulatory imprint or footprint over the activity	Page 336 1 Q. This is the June 29, 2006 from TVA to the 2 NRC. 3 A. I'm sorry. I have June 29th? 4 Q. The June 29, 2006 letter? 5 A. I got it. 6 Q. All right. I want to direct your attention 7 on Page 1, and this is Exhibit 207, to the first 8 sentence. Do you see where it says, "During a 9 conference call with the NRC project manager on 10 June 21, 2006, TVA was asked to provide additional 11 information regarding whether the subject BLN unit can 12 be considered a utilization facility as defined in 10 13 CFR 50.2 as follows." Do you see that? 14 A. Yes, I see that. 15 Q. Do you know what was discussed during that 16 conference call with the NRC project manager on 17 June 21, 2006? 18 A. No, I do not. 19 Q. And you referred -- first of all, what is 20 the difference between a terminated permit and a 21 withdrawn permit?

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Page 337	Page 339
1 A. You mean terminated status or --	1 handling license transfer document that you talked
2 Q. Within the meaning of the deferred plant	2 about with Mr. O'Rear, correct?
3 policy, is there any difference between terminated	3 A. Correct.
4 versus withdrawn?	4 Q. And let me direct you, if you look in the
5 A. Well, I think there's a distinction because	5 bottom right, the Bates numbers to Page 3478.
6 with respect to the intention of going forward, as I	6 A. Yes.
7 mentioned a couple of minutes ago, withdrawn implies	7 Q. And if you look at -- on Page 3478 under
8 that it's going to go to the point that basically,	8 Basic Requirements, the first sentence that I think
9 it's done. It's we're seeking to release ourselves	9 you looked at with Mr. O'Rear said, "License transfers
10 from NRC jurisdiction.	10 are unique in that they result in the exchange of
11 So there is some concern at the NRC that if	11 ownership and/or the responsibility for operating a
12 you're going to go to that, again, as in the Zimmer	12 nuclear facility." Do you see that?
13 situation, you're looking at making sure that there is	13 A. Yes, I do.
14 not the capability of simply making this into an	14 Q. So is that indicating that the result of the
15 operable utilization facility.	15 license transfer is the exchange of ownership, right?
16 And part of what the NRC's concern is that	16 MR. O'REAR: Objection, mischaracterizes or
17 the permits basically stay in effect until the NRC	17 misstates the language. Also it's leading.
18 releases control. That's what it -- withdrawn.	18 BY MR. LEMBKE:
19 For the terminated status, what you're	19 Q. Mr. Burns, do you see that sentence?
20 basically doing, in some respects you could go down	20 A. I see that sentence.
21 that path where they decide to basically withdraw in	21 Q. What, if anything, in that sentence
Page 338	
1 the permit. But the other option that it speaks to is	1 indicates that the exchange of ownership precedes the
2 this option of transferring it to a new owner who they	2 license transfer approval?
3 pass it off to. And a new transferee, they proceed	3 A. I don't see anything in that that says so.
4 with the completion of the project, which of course	4 Q. And then if you look at the next page which
5 would be subject to the NRC's jurisdiction.	5 is Bates number 3479, upper right, it's Page 3, do you
6 Q. You mentioned the Zimmer opinion. Do you	6 see the -- at the top of the page, the third line down
7 regard the Zimmer opinion as in any way inconsistent	7 says, "If the application is not being made by the
8 with the opinions you're offering in this case?	8 current licensee." Do you see that?
9 A. No, not at all because as I explained, I	9 A. Yes.
10 think a number of times today, it goes toward this	10 Q. And so what, if any, indication is that
11 question of -- this goes to the scenario of	11 whether it's mandatory that the current licensee
12 withdrawing as opposed to keeping alive.	12 participate in the application?
13 Q. Now, let me direct your attention to	13 A. It doesn't make it -- it doesn't make it
14 Exhibit 81, which the first page is an e-mail from Joe	14 mandatory. Again, this is an internal guidance
15 McCollum -- excuse me, from Billy Gleaves to Bill	15 document to the NRC staff.
16 McCollum.	16 Q. Okay. And then Mr. O'Rear showed you in
17	17 Exhibits 210 and 211 some passages from speeches you
18 A. Okay. It's 81?	18 gave in 2015 and 2016 when you were the Chairman of
19 Q. Yes, sir.	19 the Nuclear Regulatory Commission. Do you recall
20 A. I have it.	20 that?
21 Q. Attached to it is the procedures for	21 A. Yes, I do.

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1 Q. Did you find anything that Mr. O'Rear 2 pointed to you from those speeches as being 3 inconsistent with the opinions you're offering in this 4 case?	1 different question? 2 MR. O'REAR: You tell me what the question 3 was. That's what I heard the question to be. 4 MR. LEMBKE: The question was: Has the NRC 5 ever determined when it's first the utilization 6 facility?
5 A. No. 6 Q. Why do you say that? 7 A. Because what I tried to do in my view, my 8 opinion is consistent with those principles because 9 what it says is the NRC's normal regulatory framework 10 should be carried out.	7 MR. O'REAR: When it's first a utilization 8 facility. Okay. 9 BY MR. O'REAR: 10 Q. All right. Referring to the Zimmer case, 11 Mr. Burns, the NRC has determined when a facility is 12 not a utilization facility, hasn't it?
11 Here, again, the NRC, I do not doubt the NRC 12 needs to have communication with the applicant to ask 13 the questions it needs to ask, to evaluate the 14 answers. But I don't see anything in those speeches. 15 What I'm saying in those speeches is the NRC needs to 16 act as a consistent, reliable regulator and not act 17 arbitrarily. And in my view acting in accordance with 18 the longstanding practice that it's had and is the way 19 to go and is perfectly consistent with those 20 principles.	13 MR. LEMBKE: Objection, asked and answered. 14 MR. O'REAR: I'm following your question. 15 BY MR. O'REAR: 16 Q. It has determined when a facility is not a 17 utilization facility. Is that correct? 18 A. In the context of Zimmer? 19 Q. Yes. 20 A. Again, in the context of Zimmer and this 21 goes to the circumstances we described, I think at
21 Q. Mr. Burns, has anything that you heard today	
Page 342	Page 344
1 or any of the questions that have been asked or any of 2 the documents you've seen caused you to reconsider or 3 change any of the opinions you've expressed in your 4 report and supplemental report? 5 A. No. 6 MR. LEMBKE: I don't have anything further. 7 Thank you. 8 MR. O'REAR: I've got a few follow ups for 9 those questions. Won't take long at all. 10 EXAMINATION: 11 BY MR. O'REAR: 12 Q. If I could get before you the Zimmer case 13 that Mr. Lembke asked you about. This is Exhibit 132. 14 A. I've got it. 15 Q. I believe Mr. Lembke asked you whether the 16 NRC's ever made a decision on when along the spectrum 17 of construction the NRC determines that a facility is 18 a utilization facility. I'm paraphrasing his question 19 but do you recall that? 20 MR. LEMBKE: Well, I object that it 21 misstates the question. Why don't you read a	1 least in another plants, is it goes to the question of 2 are we satisfied at NRC that the licensee, we can 3 terminate the permit, the licensee can go away, no 4 longer subject to NRC jurisdiction. And then we don't 5 have any concern with respect to the state of the 6 plant at the site. And that's what it's focused on, 7 assuring that it's defeated from that. It's not in 8 effect withdrawn status of the construction permit. 9 Everybody's going away from the facility. 10 And that's what I think the significance of the Zimmer 11 case is. And it has to be understood in that context. 12 It can't be re-quoting outside of that context with 13 respect to what's said in the Zimmer opinion. 14 Q. But the Zimmer case did say if you remove 15 the nuclear fuel, if you sever and weld the caps on 16 the two main feed water lines and the four main steam 17 lines and if you remove the control rod drive 18 mechanisms, then the facility is not a utilization 19 facility? 20 A. That has continued to be subject to NRC 21 regulation.

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Page 345	Page 347
1 MR. LEMBKE: And I'm going to object, it	1 the operative provisions of the policy statement,
2 misstates the exhibit.	2 which gives the context of what expectations are that
3 BY MR. O'REAR:	3 the NRC might have and the guidance it's given to
4 Q. When Mr. Lembke asked you about the deferred	4 those who might want to take advantage of certain -- a
5 plant policy, he asked you what distinction's drawn in	5 different circumstance.
6 that policy between a withdrawn application -- excuse	6 MR. O'REAR: No further questions.
7 me, a withdrawn construction permit and a terminated	7 MR. LEMBKE: Don't have anything further.
8 permit.	8 Mr. Norris, we do want to read and sign.
9 Does the deferred plant policy statement in	9 TVA and Nuclear Development want copies.
10 any way refer to a withdrawn permit?	10 (The deposition concluded at 6:57 p.m.)
11 A. Yes, it does. I would say it does. It says	11
12 in Section B on terminated plants, Section 1 it says	12
13 in the event that withdrawal of CP is sought, the	13
14 permit holder should supply notice to staff	14
15 sufficiently far in advance of the expiration of the	15
16 permit to -- for the staff to determine appropriate	16
17 terms and conditions.	17
18 Q. But --	18
19 A. So it sounds like where the current holder	19
20 is moving toward ending the project all together. It	20
21 then has the language that allows for as I call it the	21
Page 346	Page 348
1 scavenging of parts or transfer -- the discussion of	1 REPORTER'S CERTIFICATE
2 transfer to a potential new owner.	2 State of Maryland
3 Q. But under the deferred plant policy, a	3 County of Baltimore, to wit:
4 deferred plant is a defined term, correct? Deferred	4 I, KENNETH NORRIS, a Notary Public of
5 plant status?	5 the State of Maryland, County of Baltimore, do hereby
6 A. Yes, a deferred plant is one that	6 certify that the within named witness personally
7 contemplated where they -- they talked about it, in	7 appeared before me at the time and place herein set
8 terms of for purposes of the guidance as we discussed	8 out, and after having been duly sworn by me, according
9 before as one basically where the option is being	9 to law, was examined.
10 preserved.	10 I further certify the examination was
11 Q. But the policy defines deferred plant	11 recorded stenographically by me and this transcript is
12 status, correct?	12 a true record of the proceedings.
13 A. It gives a definition of deferred plant,	13 I further certify that I am not of
14 yes.	14 counsel to any of the parties, nor in any way
15 Q. And it defines terminated plant, correct?	15 interested in the outcome of this action.
16 A. Yes, it also gives a terminated plant.	16 As witness my hand and notarial seal
17 Q. It does not use the term "withdrawn plant,"	17 this 19th day of August, 2020.
18 does it?	18 
19 A. Well, not in the definitions. But what's	19 KENNETH NORRIS
20 operative in the policy is what the significance of	20 Notary Republic
21 what the holder of the permit may do. And I read from	21 My Commission Expires: 7-07-22

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Page 349		Page 351	
1	CERTIFICATE OF DEPONENT	1	Reference No.: 5882449
2		2	Case: NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY
3	I hereby certify that I have read and	3	Page No. _____ Line No. _____ Change to: _____
4	examined the foregoing transcript, and the same is a	4	_____
5	true and accurate record of the testimony given by me.	5	Reason for change: _____
6		6	Page No. _____ Line No. _____ Change to: _____
7	Any additions or corrections that I	7	_____
8	feel are necessary, I will attach on a separate sheet	8	Reason for change: _____
9	of paper to the original transcript.	9	Page No. _____ Line No. _____ Change to: _____
10		10	_____
11	_____	11	Reason for change: _____
12	Stephen G. Burns	12	Page No. _____ Line No. _____ Change to: _____
13		13	_____
14		14	Reason for change: _____
15		15	Page No. _____ Line No. _____ Change to: _____
16		16	_____
17		17	Reason for change: _____
18		18	Page No. _____ Line No. _____ Change to: _____
19		19	_____
20		20	Reason for change: _____
21		21	Page No. _____ Line No. _____ Change to: _____
		22	_____
		23	Reason for change: _____
		24	SIGNATURE: _____ DATE: _____
		25	Stephen G. Burns
Page 350		Page 352	
1	Reference No.: 5882449	1	Reference No.: 5882449
2		2	Case: NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY
3	Case: NUCLEAR DEVELOPMENT vs TENNESSEE VALLEY AUTHORITY	3	Page No. _____ Line No. _____ Change to: _____
4		4	_____
	DECLARATION UNDER PENALTY OF PERJURY	5	Reason for change: _____
5		6	Page No. _____ Line No. _____ Change to: _____
6	I declare under penalty of perjury that	7	_____
7	I have read the entire transcript of my Depo-	8	Reason for change: _____
8	sition taken in the captioned matter or the	9	Page No. _____ Line No. _____ Change to: _____
9	same has been read to me, and the same is	10	_____
10	true and accurate, save and except for	11	Reason for change: _____
11	changes and/or corrections, if any, as indi-	12	Page No. _____ Line No. _____ Change to: _____
12	cated by me on the DEPOSITION ERRATA SHEET	13	_____
13	hereof, with the understanding that I offer	14	Reason for change: _____
14	these changes as if still under oath.	15	Page No. _____ Line No. _____ Change to: _____
15		16	_____
16	_____	17	Reason for change: _____
17	Stephen G. Burns	18	Page No. _____ Line No. _____ Change to: _____
18		19	_____
19	NOTARIZATION OF CHANGES	20	Reason for change: _____
20	(If Required)	21	Page No. _____ Line No. _____ Change to: _____
21	Subscribed and sworn to on the _____ day of	22	_____
22		23	Reason for change: _____
23	_____	24	SIGNATURE: _____ DATE: _____
24	(Print Name) Notary Public,	25	Stephen G. Burns
25	in and for the State of _____		